Supreme Court, U. S.
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APPENDIX

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 76-1662

UNITED STATES OF AMERICA,

Appellant

—*v.*—

BOARD OF COMMISSIONERS OF SHEFFIELD, ALABAMA, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA

JURISDICTIONAL STATEMENT DOCKETED MAY 25, 1977
PROBABLE JURISDICTION NOTED JUNE 27, 1977

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RELEVANT DOCKET ENTRIES
CA 76 M1086NW

DATE	PROCEEDINGS
1976	
Aug. 9	Complaint—filed
Sept. 3	Stipulations of fact—filed
Sept. 3	Hearing before the Hon. Richard T. Rives; Hon. H. H. Grooms and Hon. Frank H. McFadden—opening statements of counsel—stipulations of fact filed—plaintiff's testimony—affidavit of Gerald W. Jones filed—defendant's objection of affidavit entered—objection sustained—plaintiff rests—defendant's testimony—defendant rests—oral argument of counsel—ruling taken under advisement
Dec. 27	Motion of plaintiff for reconsideration and amendment of Order and Opinion entered 12/13/76—filed—cs—rfd

IN THE
UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ALABAMA
NORTHWESTERN DIVISION

Civil Action No. 76-M-1086-NW

[Filed Aug. 9, 1976]

UNITED STATES OF AMERICA, PLAINTIFF

v.

BOARD OF COMMISSIONERS OF SHEFFIELD, ALABAMA; F. E. DRAPER, Member and President and B. F. WALDEN and DONALD F. RUGGLES, Members, DEFENDANTS

COMPLAINT

The United States of America, plaintiff herein, alleges:

1. This action is brought by the Attorney General on behalf of the United States pursuant to Section 5 and 12(d) of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c and 1973j(d), and pursuant to 28 U.S.C. 2201.

2. This Court has jurisdiction of this action pursuant to 42 U.S.C. 1973j(f) and 28 U.S.C. 1345.

3. Defendant Board of Commissioners of Sheffield, Alabama is the governing body established under the laws of the State of Alabama responsible for exercising the powers and duties inherent in governing the City of Sheffield.

4. Defendant F. E. Draper is the President of the Board of Commissioners of the City of Sheffield and the duly elected mayor of the City. As such, he is vested by the laws of the State of Alabama with the power and the duty to conduct municipal elections. Defendant F. E. Draper is a resident of the Northern District of Alabama.

5. Defendants B. F. Walden and Donald F. Ruggles are members of the Board of Commissioners of the City of Sheffield. As such, they are vested by the laws of the State of Alabama with the responsibility for canvassing

and certifying election results, ordering run-off elections and other powers and duties concerning the conduct of municipal elections. Defendants B. F. Walden and Donald F. Ruggles are residents of the Northern District of Alabama.

6. The provisions of Section 5 of the Voting Rights Act of 1965, as amended, 1973c, apply to the City of Sheffield, Alabama.

7. Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, requires that jurisdictions subject to its provisions which "enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964," obtain a declaratory judgment from the United States District Court for the District of Columbia that the change affecting voting "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color . . ." except that such a change affecting voting may be implemented without such a judgment if it is submitted to the Attorney General and he has not interposed an objection in 60 days.

8. On May 13, 1975, voters in the City of Sheffield voted pursuant to a special referendum election to abandon the existing commission form of government and to adopt the aldermanic (mayor-council) form of government. Under the aldermanic form of government the Mayor and Council president are to be elected at-large and the eight council members are to be elected at-large with a residency requirement.

9. The change in the form of government for the City of Sheffield and the system for electing that government constitute changes affecting voting within the meaning of Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c.

10. The proposed change to the mayor-council form of government and the proposed procedures for electing that government were submitted to the Attorney General by the City of Sheffield, Alabama pursuant to Section 5 of the Voting Rights Act of 1965, as amended. The submission by the City was completed on May 5, 1976.

11. In a letter dated July 6, 1976, J. Stanley Pottinger, Assistant Attorney General, Civil Rights Division of the Department of Justice advised the Sheffield City Attorney that while no objection to the change in the form of government or the at-large method of electing the Mayor and the Council president would be interposed, he was unable to conclude that the at-large election of councilmen required to reside in districts will not have a racially discriminatory effect and therefore, on behalf of the Attorney General, interposed an objection to the implementation of the proposed at-large method of electing city councilmen. A copy of the July 6, 1976 letter is attached as Exhibit A.

12. As of August 3, 1976, the Attorney General has not received a request from the City of Sheffield to reconsider his objection on the basis of information not previously available that shows that the proposed method of election does not have the effect of denying or abridging the right to vote on account of race or color. 28 C.F.R. Sections 51.21 (b) ; 51.24 and 51.25.

13. No action has been instituted in the United States District Court for the District of Columbia pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, for a declaratory judgment that the proposed method of electing the councilmen neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race or color.

14. The failure to receive the preclearance required by Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, as described in the preceeding paragraphs, renders the proposed method of electing the councilmen legally unenforceable.

15. Notwithstanding the objection of the Attorney General to the proposed method of electing the councilmen, the defendants are planning to and will implement the legally unenforceable at-large method of electing city council members in an election scheduled for August 10, 1976.

16. Unless the defendants are restrained and enjoined by this Court, membership on the Sheffield City Council will be decided in a manner which is in violation of Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c.

WHEREFORE, plaintiff prays that this cause be advanced on the docket for a speedy and expeditious hearing and that a court of three judges hear this action pursuant to 28 U.S.C. § 2284 and Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c, and thereafter issue a judgment:

(a) Declaring that the implementation by the City of Sheffield, Alabama of the proposed method of electing the city councilmen to which the Attorney General interposed an objection violates Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c;

(b) Enjoining defendants, their agents and successors in office, and all persons acting in concert with any of them from administering, implementing or conducting an election on August 10, 1976 for membership on the Sheffield City Council pursuant to the proposed method of election to which the Attorney General has interposed an objection under Section 5 and administering, implementing or conducting any subsequent elections in Sheffield, Alabama pursuant to the legally unenforceable plan;

(c) Prohibiting the implementation of any voting practice or procedure different from that in effect in Sheffield, Alabama, on November 1, 1964, unless and until such practice or procedure is submitted to the Attorney General and 60 days pass without interposition of an objection, or a favorable declaratory judgment is obtained from the United States District Court for the District of Columbia pursuant to Section 5 of the Voting Rights Act of 1965;

(d) Ordering defendants to develop a plan for nominating and electing Sheffield City Councilmen, and, after the plan is found to be acceptable under the provisions of Section 5 of the Voting Rights Act of 1965, to implement the new plan

on a schedule that will enable the councilmanic elections to be conducted pursuant to this new plan.

Plaintiff further prays that this Court grant such additional relief as the interests of justice may require, together with the costs and disbursements of this action.

/s/ Edward H. Levi
EDWARD H. LEVI
Attorney General

/s/ J. Stanley Pottinger
J. STANLEY POTTINGER
Assistant Attorney General

/s/ _____
WAYMAN G. SHERRER
United States Attorney

/s/ Sheila K. Delaney
GERALD W. JONES
SHEILA K. DELANEY
Attorneys
Department of Justice
Washington, D. C. 20530

EXHIBIT A

Jul. 6, 1976

Mr. Vincent McAlister
Almen, McAlister & Ashe
Attorneys at Law
Post Office Drawer N
Sheffield, Alabama 35660

Dear Mr. McAlister:

This is in refernece to the change in form of government for the City of Sheffield, Alabama, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was received on May 5, 1976.

The Attorney General does not interpose any objection to the change to a mayor-council form of government. We feel a responsibility to point out, however, that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such change.

In reference to the proposed method of electing councilmen under the new form of government, the Attorney General has no objection to the proposed district lines or to the at-large election of the mayor and the president of the council. We are, however, unable to conclude that the at-large election of councilmen required to reside in districts will not have a racially discriminatory effect. Recent court decisions, to which we feel obligated to give great weight, indicate that the use of residency requirements, numbered posts, and a majority vote requirement in the context of at-large elections has the potential for abridging minority voting rights. See *White* v. *Regester*, 412 U.S. 755 (1973); *Whitcomb* v. *Chavis*, 403 U.S. 124 (1971).

Accordingly, on behalf of the Attorney General, I must interpose an objection to the implementation of the proposed at-large method of electing city councilmen.

Please be advised that you may request the Attorney General to reconsider his objection on the basis of information not previously available that shows that the new method of election does not have the effect of denying

or abridging the right to vote on account of race or color. See 28 C.F.R. Sections 51.21(b), 51.24 and 51.25. In addition, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the District Court for the District of Columbia that this method of election has neither the purpose nor the effect of denying or abridging the right to vote on account of race or color.

Sincerely,

J. STANLEY POTTINGER
Assistant Attorney General
Civil Rights Division

cc: Public File
V8341

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHWESTERN DIVISION

Civil Action No. 76-M-1086-NW

[Filed Sept. 3, 1976]

UNITED STATES OF AMERICA, PLAINTIFF,

vs.

BOARD OF COMMISSIONERS OF SHEFFIELD, ALABAMA, ET AL.
DEFENDANTS

ANSWER

Come the defendants and for answer to the complaint heretofore filed plead and say as follows, separately and severally:

1. The defendants admit the allegations of paragraphs 1, 2, 3, 4, 5, 7, 8, 11 and 13 and deny all other allegations of the complaint.

2. Section 5 of the Voting Rights Act of 1965 as amended 42 U.S.C. § 1973(c) is not applicable to the procedures followed by the City of Sheffield.

3. The City of Sheffield, in the procedures followed by it, was merely implementing a general statute of the State of Alabama which had existed since 1909.

4. The action of the Attorney General in filing this suit was arbitrary, capricious, discriminatory and showed bad faith action.

5. The Attorney General in filing this suit seeks equitable relief and as such must come into the court with clean hands. This equitable maxim has been violated by the Attorney General.

6. The Attorney General failed to interpose an objection to the procedure adopted by the City of Sheffield within 60 days after such submission had been completed.

7. As applied by the Attorney General in this case,

the provisions of the Voting Rights Acts of 1965 as amended are unconstitutional and deny to the defendants and the citizens of Sheffield the equal protection of the laws and the right to vote.

ALMON, McALISTER & ASHE

By /s/ Vincent McAlister
Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHWESTERN DIVISION

Civil Action No. 76-M-1086-NW

[Filed Sept. 3, 1976]

UNITED STATES OF AMERICA, PLAINTIFF,

v.

BOARD OF COMMISSIONERS OF SHEFFIELD, ALABAMA; F. E. DRAPER, Member and President and B. F. WALDEN and DONALD F. RUGGLES, Members, DEFENDANTS.

STIPULATIONS OF FACT

Plaintiff, the United States of America, and defendants, the Board of Commissioners of Sheffield, Alabama et al., by and through their attorneys, stipulate that the facts listed in the numbered paragraphs below are true and accurate. The parties further stipulate that the exhibits attached to the stipulations are accurate copies of original documents. These stipulations are limited to the truth of the facts stipulated. The parties reserve the right to object to any of the stipulated facts on grounds of irrelevancy or immateriality. The parties reserve the right to offer additional evidence not inconsistent with the stipulations herewith.

1. The Board of Commissioners of Sheffield, Alabama is the governing body established under the laws of the State of Alabama and is responsible for exercising the powers and duties inherent in governing the City of Sheffield.

2. The present Board of Commissioners of Sheffield, Alabama is composed of 3 members, who are elected at-large, to designated positions on a majority vote, staggered term basis. The existing commissioner form of government in Sheffield, Alabama has been in force and effect since before November 1, 1964.

3. Defendant F. E. Draper is the President of the Board of Commissioners of the City of Sheffield and the duly elected mayor of the City. As such, he is vested by the laws of the State of Alabama with the power and the duty to conduct municipal elections. F. E. Draper is a resident of the Northern District of Alabama.

4. Defendants B. F. Walden and Donald F. Ruggles are members of the Board of Commissioners of the City of Sheffield. As such, they are vested by the laws of the State of Alabama with the responsibility for canvassing and certifying election results, ordering runoff elections and other powers and duties concerning the conduct of municipal elections. Defendants B. F. Walden and Donald F. Ruggles are residents of the Northern District of Alabama.

5. A copy of the letter dated March 20, 1975 from Defendant F. E. Draper to the United States Attorney General is attached hereto as Exhibit 1.

6. On May 13, 1975, voters in the City of Sheffield voted in a special referendum election pursuant to the provisions of the Code of Alabama, Tit. 37, Ch. 4, Art. 3, as amended, to abandon the existing commission form of government in favor of a mayor-council form of government which would become effective in October, 1976.

7. A copy of the letter dated May 23, 1975, from J. Stanley Pottinger, Assistant Attorney General, Civil Rights Division to Defendant Draper is attached hereto as Exhibit 2.

8. A copy of the letter dated October 21, 1975 from Vincent McAlister, Sheffield City Attorney, to J. Stanley Pottinger, Assistant Attorney General, Civil Rights Division is attached hereto as Exhibit 3.

9. Under the proposed mayor-council form of government, the mayor and the president of the city council are to be elected on at-large, majority vote basis while the 8 councilmen are to be elected on an at-large, numbered post basis with majority vote and residency requirements. See Code of Alabama, Tit. 37, §§ 34(22), 34(54) and 426 (1973 Cum. Supp.).

10. A copy of the letter dated December 22, 1975, from J. Stanley Pottinger, Assistant Attorney General, Civil Rights Division to Vincent McAlister, Sheffield City Attorney is attached hereto as Exhibit 4.

11. A copy of the letter dated May 3, 1976, from Vincent McAlister, Sheffield City Attorney, to J. Stanley Pottinger, Assistant Attorney General, Civil Rights Division is attached hereto as Exhibit 5.

12. A copy of the letter dated July 6, 1976 from J. Stanley Pottinger, Assistant Attorney General, Civil Rights Division, to Vincent McAlister, Sheffield City Attorney is attached hereto as Exhibit 6.

Respectfully submitted,

Dated this —— day of September, 1976

/s/

Attorney for Plaintiff
Department of Justice
Washington, D.C. 20530

/s/

Attorney for Defendants
Almon, McAlister & Ashe
Nathan Building
Sheffield, Alabama 35660

EXHIBIT 1

CITY OF SHEFFIELD
Sheffield, Alabama

March 20, 1975

The Honorable Louis Levi
Attorney General of the United States
Washington, D.C. 20530

Dear Mr. Levi:

The undersigned, as President of the Board of Commissioners of the City of Sheffield, Alabama, does hereby give notice of the proposal of submitting to the qualified voters of the City, whether the present commission form of government shall be abandoned in favor of the Mayor and Alderman form of government.

While it is doubtful that this proposition as to change of forms of municipal government is covered by the 1965 voting Rights Act extended in 1970 notice is nevertheless given you in the event the assumption is in error.

Briefly, the change proposed is covered by the provisions of Article 3 of Title 37 of the Code of Alabama, 1940, as amended, which amendments include Act 664, Acts of Alabama 1961, and Act 166, Acts of Alabama, (Reg. Session) 1961.

These provisions are largely concerned with the requirements and mechanics of calling and holding an election for submission to voters.

Present existing voting wards are not changed at the time of voting (but may be equitably adjusted at a later date) and in the case of the City of Sheffield, Alabama, the form of government (mayor-alderman) existed in 1912 and if the present commission type is abandoned, the previous form would automatically be reinstated.

No requirement or condition to vote, other than now exist, will be applicable as to voters to the proposition for change, now set for May 13, 1975.

In the event more information is required, please advise.

Very truly yours,

CITY OF SHEFFIELD, ALABAMA

/s/ F. E. Draper
F. E. DRAPER, Mayor
President, Board of Commissioners

FED:jgj

cc: Attorney General William Baxley
State of Alabama
Montgomery, Alabama

EXHIBIT 2

May 23, 1975

Mr. F. E. Draper
President, Board of Commissioners
City of Sheffield
Post Office Box Q
Sheffield, Alabama 35660

Dear Mr. Draper:

This is in reference to the submission of a referendum to change the existing commission form of government which was submitted to the Attorney General by the City of Sheffield, Alabama, pursuant to Section 5 of the Voting Rights Act of 1965 as amended. Your letter of March 20, 1975 was received on March 25, 1975. This letter will also confirm the telephone conversation on April 18, 1975 between you and Departmental Attorney Sheila K. Delaney.

The Attorney General does not interpose an objection to the holding of the referendum. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of the change.

Since voters in the City of Sheffield elected to adopt the mayor-council form of government on May 13, 1975, that change is also subject to the preclearance requirements of Section 5. In the event that you elect to make a submission to the Attorney General rather than the United States District Court for the District of Columbia would you please assist us by providing this Department with the following information:

1. A copy of the proclamation or resolution adopted by the City Commission which includes the proposition which was submitted to voters in the City of Sheffield on May 13, 1975.
2. A copy of the State Attorney General's opinion which was rendered concerning the proposed change in the form of government.

3. A statement of the citations for all legislative enactments which describe fully the aldermanic form of government which existed in 1912 and the method by which it was elected, *i.e.*, the number of aldermen, the terms and qualifications for the mayor and aldermen, whether the aldermen were elected at-large or by wards, whether there were numbered post, residency, majority vote or staggered term requirements for the aldermanic seats, and whether single shot voting was prohibited.
4. A full description of the method of electing the aldermanic form of government and a statement to what extent, if any, that method of election differs from the method of election in force in 1912. Please provide a statement of the citations for all legislative enactments which will govern the method of electing the first and all succeeding aldermanic administrations.
5. While copies of local newspaper articles and editorials which discussed the proposition to abandon the city's existing form of government are not essential for purposes of our review, we would appreciate it if you would enclose some.

It is our understanding that since the voters elected to abandon the commission form of government, the commission will remain in office until the first aldermanic form of government is elected at the next general municipal election in August, 1976. It is our further understanding that there will be four wards under the mayor-council form of government, the boundaries of which will be drawn at least six months before the election of the first aldermanic form of government. If this information is in error, please advise us.

If you have any questions, please do not hesitate to call Ms. Delaney, the Attorney assigned to handle this submission. Her telephone number is Area Code 202-739-4421.

Sincerely,

J. STANLEY POTTINGER
Assistant Attorney General
Civil Rights Division

EXHIBIT 3

CITY OF SHEFFIELD
Sheffield, Alabama

October 21, 1975

Mr. J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division
Department of Justice
Washington, D.C. 20530

Dear Mr. Pottinger:

In re: City of Sheffield, Alabama

Reference is made to your letter of May 23, 1975, addressed to F. E. Draper, President, Board of Commissioners, Sheffield, Alabama, in regard to the referendum to change the existing commission form of government in this city to a mayor-alderman form of government.

We are enclosing the following documents requested by your letter of May 23:

1. Informational brochure on mayor-alderman form of government
2. Copies of various news articles relating to the change in the form of government
3. Certified copies of resolutions of the Board of Commissioners of the City of Sheffield
4. Opinion of Attorney General of State of Alabama dated August 19, 1968.

If you have any additional question, please do not hesitate to call me.

Yours very truly

ALMON, MCALISTER & ASHE

By /s/ Vincent McAlister
City Attorneys

VMc:avw
Enclosures

MAYOR/COUNCIL FORM OF GOVERNMENT FOR CITY OF SHEFFIELD, ALABAMA

PREFACE

On May 13, 1975, as a result of petition of the citizens of Sheffield, Alabama, said petition having been certified by the Probate Judge of Colbert County, a special election was called for the purpose of whether the proposition should be adopted to abandon the Commission form of government as it exists in said city currently and return to the aldermanic (Mayor-Council) form of government as it existed in said city at the time the commission form of government was adopted." The results of this special election showed 723 votes in favor of and 368 votes against the change in form of government. Therefore, Sheffield will change to the Mayor-Council form of government in 1976.

Some background information may prove helpful. Originally, Sheffield was incorporated by the Alabama Legislature on February 17, 1885 under a Mayor-Aldermanic form of government. Four wards were established, each from which two aldermen were elected by only the voters of that particular ward from which the candidate actually ran for office. Later in 1909, five wards were established. In 1912, voters of the city elected to change to the Commission type of government for which no wards were required. Three commissioners were elected from the city at large. This form of government (3 man commission) has been in effect continuously from 1912 and will officially end and change to the Mayor-Council form in October of 1976.

Title 37, Code of Alabama 1958 Recompiled Edition with amendments thereto contains the basic state statute which governs the creation, organization and functioning of cities in the Sttae of Alabama. Many changes have occurred in State Statute Title 37, since 1912 (date our city last had the Mayor-Council form of government). The major change affecting Sheffield has to do with the

distinction made by the legislature between how council forms of government operate in cities of under 12,000 population and over 12,000 population. The latest regular federal decennial census lists Sheffield's population as 13,115 persons. Many times, in order to find the state statute that applies to a particular city, extreme caution must be taken to assure that these differences in population are noted. One procedure may be used in a city of under 12,000 population where an exact opposite procedure would be used in a city with over 12,000 population.

As the years pass, we must be ever mindful that changes in population can mean certain changes in government automatically. For instance, when Sheffield's population reaches 20,000 or more, the councilmen are then elected by the voters of the ward from which they run for office rather than by the voters of the city at large. The Attorney General has ruled that a census cannot bring about a change in the form of a Mayor-Council form of government until the next general municipal election held. (See Title 37, Section 5 and Title I Section 14, Code of Ala.).

This information has been prepared by the undersigned in order to make the transition from Commission to Mayor-Council form of government easier and less confusing. It is strongly recommended that newly elected officials read Title 37 of the Code of Alabama, Selected Readings for the Municipal Official, 1972 edition by the LEAGUE OF MUNICIPALITIES OF ALABAMA and the handbook for Mayors and Councilmen prepared by John F. Watkins, Executive Director of the League of Municipalities.

It is hoped that many of our citizens will have the opportunity to read this. It just might be that this information may interest some of them in becoming candidates for one of the offices under this new form of government. Certainly, we now have a more representative type of government and also have an opportunity to streamline city government where the responsibility of carrying out functions of government rests upon the shoulders of an elected official, answerable to the people.

Less than 10% of all city governments are now operating under the old Commission form of government we have just abandoned. At long last, Sheffield has made a progressive move to give its citizens an opportunity to rise to great heights through increased participation of citizens in the handling of their own affairs as a city.

Date: July 4, 1975

F. E. DRAPER
Mayor, City of Sheffield

CHAPTER ONE

BASIC ORGANIZATION—1976

The basic composition of the new government calls for the election of nine (9) councilmen and a Mayor at an election to be called on the second Tuesday in August of 1976. This is the general municipal election year. Each shall serve for a term of four years commencing on the first Monday in October following the general municipal election and lasting until the first Monday of October four years later. (title 37, Section 34(25) Code of Alabama)

It is significant to note that under Title 37, Code of Alabama, the Mayor and Councilmen hold office for their terms, or until their successors are elected and installed in office; this evidences the legislative intent that there shall be a continuous governing body qualified to determine the policies of the city and to adopt ordinances and resolutions necessary for the operation of the city (Title 37, Section 1, Code of Alabama). The corporate status of the city never, therefore, ceases to exist.

CHAPTER TWO

ELIGIBILITY AND QUALIFICATION FOR ELECTIVE OFFICE

The Mayor and Councilmen shall be residents and qualified electors of the city and remain so during their terms of office (Title 37, Section 403, Code of Alabama). Any qualified elector of the city, who shall have resided within the city for at least three (3) months prior to the general municipal election may become a candidate (Title 37 Section 34(25) Code of Alabama). One exception to this is persons residing in an area annexed to the city within three (3) months preceding the election. The Attorney General to Hon. Norman K. Brown, Sept., 2, 1964, ruled persons in this category not qualified electors at the time of election, hence, not eligible candidates.

The Mayor and President of the Council can reside anywhere in the corporate limits of the city, however, the other eight (8) councilmen must reside in the ward from which they are elected to serve. If the Mayor or President of the Council establish a permanent residence outside the city during their terms, they must vacate their offices (Attorney General opinion to H. A. Kelley, Feb., 14, 1958).

The other eight (8) councilmen must not only be residents of the city during their terms but must also reside in the ward from which they are elected, or, they must vacate their offices.

It is interesting to note that those who have been convicted of treason, embezzlement of public funds, malfeasance in office, larceny, bribery, or any crime punishable by imprisonment in a state or federal penitentiary —those who knowingly, in this state or the U.S. have given a challenge with deadly weapons or those who have a judgment unpaid for official moneys due the U.S., this state, county or city, and, members on active duty in the Armed Services of the United States are all disqualified and ineligible to hold office under Title 41, Section 5, Code of Alabama.

Citizens who meet the above qualifications as candidates should contact the city clerk's office by the deadline date which will appear in the published announcement of the general municipal election. It is necessary that the notice of intent to run for elective office be signed prior to the deadline stated in the published notice of the election. Currently, there is no charge to any candidate executing this notice.

CHAPTER THREE

VACANCIES

MAYOR. In cities under 12,000 population, the council can fill the vacancy of Mayor from its own membership or from without its membership (Title 37, Section 428, Code of Alabama), but, in the case of Sheffield, where the

population is over 12,000 persons, the President of the Council shall succeed to the office of Mayor. The President pro tempore, elected by the council, as required by statute during the first organizational meeting of the council during the October general municipal election year, shall then in this case, assume the office of President of the Council (Title 37, Section 428, Code of Alabama). The Council cannot evade the responsibility of electing councilmen to fill vacancies by the calling of a special election by the voters (74 Q Rep Atty Gen 8). Where there are so many vacancies on the council that a quorum cannot be assembled, then, the Governor must fill these vacancies by appointment (Title 41, Section 177, Code of Ala; Atty Gen to Hon. Gilbert Watson Feb 23, 1958). Whenever the President of the Council is appointed Mayor when a vacancy exists, he need not go through the formality of resigning his seat on the Council. His office is vacated by operation of law when he assumes the duties of Mayor (Attorney General to Miss Thornberry Sept 4, 1966). Let us remember in passing from matters pertaining to vacancies in the Mayor's office, that the Mayor's office is considered an office of profit and his acceptance of a second office of profit operates as an automatic vacation of the first office according to decision of the Attorney General to K. L. McRae, Jul 8, 1957.

COUNCILMEN. Vacancies in the office of President of the Council are filled by the President pro tempore. Vacancies in the office of Councilman must be announced by the Council at the next regular meeting following the occurrence and filled at any subsequent meeting of the Council. The person so elected holds office for the unexpired term (Title 37, Section 427, Code of Alabama). The Council must elect a person to fill a vacancy on the Council. There must be a majority vote of the present Council to elect. Time is of essence and, whereas, the Council does not fill the vacancy at the same meeting where the vacancy is declared (opinion of Attorney General to Hon. Charles Belew Apr 30, 1957) it is strongly recommended that such vacancies be filled at the earliest possible time to prevent the crippling effect of not having a quorum to do business.

TEMPORARY ABSENCES. The President of the Council shall act as Mayor pro tempore with the power and authority of the Mayor during the time that a Mayor in a city of over 12,000 population is absent from the city, or is unable to fulfill his duties because of sickness or other good reason. When the President of the Council is absent in cities of over 12,000 population or more, the Council will have already have serving a President pro tempore who shall in this case perform the duties of the President of the Council during such absence (Title 37, Section 428, 429(3) Code of Alabama).

HABITUAL ABSENCE OF COUNCILMEN. The Council has the authority to compel the attendance of absent members in such manner and under such penalties as it may prescribe according to Title 37, Section 429(5), Code of Alabama. It is possible that a lack of a quorum due to a refusal of councilmen to attend meetings could seriously hamper the functioning of the Council. In the adoption of its rules of procedure the Council should seriously consider providing authority for less than a quorum in attendance at a regular meeting to compel the attendance of absent members in order to complete a quorum. The Council may not prescribe by ordinance that continued absence of a councilman would render him liable for automatic vacation of office according to an opinion of the Attorney General to Hon. Lorenzo D. Allred August 2, 1955. However, worthy of note is that continued absence of a councilman would render him liable to actions of the following nature: Willful neglect of duty under Title 41, Section 212 of the Code of Alabama—Impeachment for willful neglect of duty under Title 41, Section 178 Code of Alabama—Determination by courts that the office has been abandoned—Mandatory injunction by a court of equity compelling attendance to make a necessary quorum.

CHAPTER FOUR

WARDS

Years ago, Section 5 of the Code of Sheffield October 3, 1900, specified it to be the duty of the city council to divide the city into not less than four wards and that the

number of wards may be increased or diminished by the city council provided it did so within 90 days preceding a general municipal election year. This same procedure is suggested in a letter from the Attorney General to the Mayor of Sheffield on August 19, 1968, referring to Section 5 of Act No. 664 as amended supra.

Furthermore, Title 37, Section 426, Code of Alabama states that in cities of not less than 12,000 and not more than 19,999 inhabitants (Sheffield's population category), the council is composed of a Council President elected by the voters of the city at large and, if the city has seven wards or less (Sheffield has four wards), two aldermen or councilmen elected from each ward by vote of the city at large.

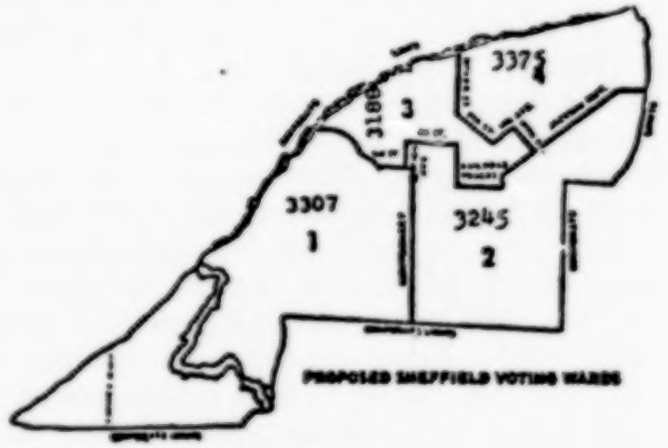
In dividing our city into four wards, it was felt initially that a recommendation from the Muscle Shoals Council of Local Governments was in order, since this body is non-political by nature and since it has at its disposal a vast quantity of data necessary in order to give equal consideration to all factors. The new law is clear that for all municipalities which elect councilmen from wards, regardless of the size of the city or system chosen, each ward must be composed of substantially the same population. Note the law does not require exact equality but substantial equality of population. Actually, this is a requirement of the federal Constitution. Also see Avery v. Midland County, Texas 88S. Ct. 1114 (1968). The necessary ordinances and change to the Code of Sheffield will be made to accomplish the dividing of the city into four wards within the prescribed time limits as required by law.

Since there will be two (2) Councilmen running for council seats from each of the four wards (this does not include the President of the Council) those councilmen are elected by a majority vote of the electors at large, and, since there will be more than one council seat available in each of the four wards, candidates must run for numbered places on the Council, for example, Place number One, Ward 2 or Place number Two, Ward 4, etc. The numbering of council places is for the purpose of election only and in no way affects the duties and responsibilities

or rank of the several councilmen (Title 37, Section 34 (22) Code of Alabama). Failure of any one candidate in not obtaining a clear majority of the total votes cast in the city at large, regardless of whether a candidate for Mayor, Councilman or President of the Council shall be sufficient cause for a run-off election in each specific elective office.

Presently, it is contemplated that one voting place with at least two voting machines shall be established for each ward. Absentee voting to be handled through City Hall at the City Clerk's office.

The following map contains the boundary lines and population of the four wards as recommended to the City Commission by the Muscle Shoals Council of Governments.



CHAPTER FIVE

PAY

MAYOR. The Mayor of Sheffield shall receive such salary as the Council may prescribe and the salary shall be fixed by the Council not less than six months prior to each general municipal election. This is done by an ordinance of a permanent nature. The present commission will set the first salary by the time required by law, thereafter, it shall be the responsibility of the Council. Section 440, as amended, by Act 738, Acts of Alabama 1967, page 1574 prescribes the minimum and a maximum an-

nual salary for the Mayor to be paid from the general fund of the city, based on population status of the city. For a city with over 10,000 population up to 24,999 (Sheffield's category) the maximum salary to be paid from the general fund is $12,000. The minimum salary for a city of this size is $5,000. It is contemplated that the salary to be paid the Mayor will be $11,400. annually from the general funds of the city. This will initially be put into effect by the present 3 man commission approving this action at least six months prior to the next general municipal election, such pay to commence on October 1, 1976. When the referendum vote was held to ascertain whether or not the new government was to be approved, information was established that the new pay of a full time Mayor would commence at $15,000. annually. In order to accomplish this, other action will be required as explained further in this Chapter.

The Council may not in any manner except as described in this paragraph require the Mayor to give full time to his duties as Mayor. The Council can require the Mayor to act as superintendent of the municipal utilities system and to give so much of his time thereto as the Council may direct (Attorney General to Hon. William Willis, Jan 21, 1960 citing Title 37, Section 440 of the Code of Alabama). Those municipalities, such as Sheffield, which own their light, power, water, sewer and gas systems may adopt a resolution *requiring* the Mayor to act as superintendent of such systems. In a city such as Sheffield, where the utility board is unincorporated, this action is accomplished by the governing body of the city. In cities where the utility board is incorporated, such utility board may by resolution employ the Mayor to act as superintendent. He shall be paid for his services, not to exceed $300. monthly. If his services were required on a full time basis with the utility department his salary could be increased not to exceed $600. monthly. The governing body may, at any time, dispense with the Mayor's services as superintendent of the utilities.

In order to assure a salary of $15,000. per year to the Mayor for full time service to the city, it is mandatory that the present commission adopt the resolution requiring the Mayor to serve as superintendent of the utilities department at a salary of $300. monthly. This action should be accomplished at least six months prior to the general municipal election of 1976 but will not become effective until October 1, 1976. The present pay awarded by the commission to the City Clerk for services to the utility board should be discontinued when the official currently holding that office retires in 1976 and should not be renewed to future city clerks so long as the Mayor is required to serve on a full time basis and part of his salary is paid to him by the utilities department as explained in this paragraph.

Under the action cited in this Chapter, the Mayor, under the new Mayor-Council form of government will receive $3,600. pay annually from the utilities department and initially $11,400. annually from the general fund of the city, or, a total of $15,000. annually commencing October 1, 1976 and, would be required to serve the city in a full time capacity. The Mayor is entitled to an official city vehicle during his term of office.

Some general comments regarding other pay factors for the Mayor would be that at least the minimum pay of $5,000. would be paid the Mayor, whether approved by the Council or not (82 Q Rep Atty Gen 46). It would not be legal for the Mayor to waive his salary. The Mayor is entitled to group insurance if he desires, however, social security deductions are not made nor payments made to the Federal Government therefor. The Mayor is entitled to legitimate expenses for official duties as prescribed by the Council in current instructions to the City Treasurer. Flat expense account is not recommended without an accounting. The Mayor is required to be bonded.

PRESIDENT OF THE COUNCIL. As head of the legislative body (Council) this position requires more work and attention than the regular council posts, therefore, at least six months prior to the date of the general municipal election of 1976, the present 3 man commission shall adopt an ordinance setting forth the pay of the President of the Council at $200.00 monthly. Title 37,

Sections 429 & 430 of the Code of Ala) state that at least two regular meetings must be held by the Council and they must be open to the public. Simply speaking, the Council President will receive $100.00 per meeting for each regular meeting not to exceed $2,400. annually in any event. There are no limitations for the salary of Councilmen set be state statute, including pay of the Council President.

COUNCILMEN. Unless the President pro tempore of the Council is elected to permanently fill a vacancy created in the office of the President of the Council, he shall be given the same pay as all other regular Councilmen. The pay for regular councilmen shall be set initially at $100.00 monthly or $1,200. annually. As has been stated, the present 3 man commission must set forth the pay for such councilmen at least six months prior to the general municipal election of 1976. Thereafter, the Council shall have this responsibility. State statute sets no limitations to pay for Councilmen. They should be required to attend at least two regular meetings of the Council each month.

Some comments, in general, pertaining to other pay factors for Councilmen are that they are entitled to reimbursement for expenses incurred by them in the performance of official duties required of them in the same manner as the Mayor is entitled. Social security deductions will not be made from their pay nor will the City match any social security deductions in these cases. Councilmen are entitled to group insurance as is afforded other officers and employees of the city. Councilmen are not required to be bonded.

It is not contemplated that that Councilmen, including the President of the Council receive transportation in kind (an automobile furnished by the city) on a regular day by day basis. Travel expenses will be allowed for official travel, when approved, outside the city while performing official duties.

Travel by personal conveyance within the corporate limits of the city while on official duty and travel to and from Council meetings is not subject to mileage reimbursement by the city. Councilmen may request city transportation on an as needed and when available basis but not when needed for the purposes of travel to and from Council meetings.

CHAPTER SIX

DUTIES AND RESPONSIBILITIES OF ELECTED OFFICIALS—MAYOR

Another important report required by law to be made to the council by the mayor is a written statement to the council at least once every six months showing the financial condition of the city (Section 444 of Title 37, Code of Alabama). However, remember that the mayor *must* secure an *audit*, as distinguished for rendering the above report, at least once a year. It has been previously stated in this pamphlet that the council has discretionary power to appoint an auditor. Such has been the case in the present form of government, but, Section 445, Code of Alabama, under the mayor-council form of government says that the council may not then make the apointment of the accountant who is to do the *annual audit*. It authorizes the mayor to enter into a contract fixing the accountant's fee at a reasonable amount without the approval of the council. Then, the council becomes legally obligated to pay a reasonable fee for such services, though it has not been authorized to take part in the agreement or contract. (See Atty Gen opinion to League of Mun. Nov 4, 1959). This does not apply in cases of a reaudit, or where audits are on a continual full-time basis.

The mayor has an important function in disbursing of municipal funds. All expenditures of municipal funds must be specifically approved by the mayor or by some other person designated in his stead by the council. This provision of law was to primarily have someone who would be able to approve disbursements in the mayor's absence (Title 37, Section 446, Code of Alabama).

In the event of a mob, riot, or tumult threatening the peace and safety of the city, the mayor is authorized to issue a proclamation closing all stores and establishments where arms, ammunition, dynamite, or other explosives are sold, forbidding the sale, lending, bartering or giving

of any such articles until such times as he deems these activities safe. (Title 37, Section 442, Code of Alabama) In this regard, the mayor should acquaint himself with the local civil defense Director for the county as well as the services that are made available through the Red Cross and the Local Alabama National Guard. Certainly, the mayor should keep his council abreast of all such emergencies since the councilmen are from the various wards of the city and can be a great help and quieting influence.

The Mayor has certain election duties that are required by state statute to be performed. When general municipal elections are held, he is required to see that a notice of the election is published; to see that election supplies are on hand; to prepare and provide ballots; to provide voting places; to provide absentee voting materials and ballots; and, to notify election officials. League of Municipalities Bulletin No. 232 and Title 37, Sections 34(22) (25) (26) (31) (33) (35) of Title 37, Code of Alabama contain specific info) The mayor must see that a list of registered qualified voters is prepared in primary elections. In event the mayor is a candidate for reelection, the council will appoint a disinterested person to act in his stead for the purpose of preparing the lists of registered voters.

The legislature has authorized the council to place the administration of certain detailed municipal activities under the supervision and control of boards appointed for that purpose. Some of the boards created for such special purposes are incorporated and have detailed statutory powers, and some boards are merely unincorporated agencies of the municipality. It is vitally important that the mayor maintain close contact with such boards so their activities can be coordinated with the activities of the municipal departments under his supervision and control. Furthermore, the mayor has varying degrees of control over such boards; he may be a member of the board, ex-officio, or the appointing authority for some of the members of the board.

The mayor is regarded as the ceremonial head of the city government; he should head up delgations to other

cities on important occasions; welcome dignitaries; conventions and civic gatherings. He should invariably put aside his political differences on these occasions and remember that his actions on these occasions are those of mayor, not those of a private citizen. Most important, he must maintain public relations with all news media in order to let his

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The Bureau of Public Information/Administration of the University of Alabama published in 1969 a pamphlet entitled "Government in Alabama" which makes very interesting reading concerning the duties and responsibilities of the elected officials. On page 61 of the book appears the following remarks, "There are approximately 380 incorporated municipalities in Alabama and most of them are governed under the mayor-council form. The principal characteristic of this plan is that the powers of the municipal governing authority are divided between an elective mayor and an elective council. The mayor serves as the formal head of the municipal government and as the chief executive officer; the council serves as the legislative policymaking unit of the municipal government."

In his capacity as chief executive officer, the mayor has general powers of supervision over all other officers and the affairs of the municipality, except as may be otherwise provided by law. He appoints all officers whose method of selection is not otherwise provided for, and he may remove any officer appointed by him alone. If any officer is selected by the council, or appointed with the approval of the council, the mayor may remove the officer temporarily, and the removal becomes permanent upon the council approval of the action. It is advised that civil service regulations be read and understood thoroughly before taking action to remove civil service employees or officers coming under local civil service boards. The council normally passes on to the mayor the authority to enter into certain type contracts and gives him power to sign deeds in the name of the city. It is the mayor's responsibility to see that all contracts are properly performed. He may require reports from other municipal officers and he, himself, regularly reports to the council.

Even though the mayor does not sit with nor have a vote on the council, he should be required by the council to attend at least one council meeting each month in order that they may keep abreast of the current problems and accomplishments of the city on a regular basis. It is the mayor's responsibility to see that an annual audit of the financial records of the city is made by an accountant. The mayor should present the first draft of the proposed city budget to the council at such time as it would be ready for adoption by the beginning of the fiscal year (By Nov. 1st). Also, another reason for having the mayor attend at least one monthly meeting of the council would be to have him available, in person, to answer inquiries of certain councilmen relative to matters pertaining to that councilman's duties in his appointive position on the various committees to which appointed by the President of the Council. The mayor is required to make a written report to the council at the first regular meeting each month of the fines and costs remitted, sentences commuted, and pardons and paroles granted by him during the preceding month, stating the reasons therefor. (Section 599, Title 37, Code of Ala.).

As stated above, a report in writing must be made to the council on a monthly basis, regarding fines and pardons and paroles. Title 37, Section 599, Code of Alabama gives the mayor the authority, acting under his duties as chief executive to remit fines and costs imposed by the recorder or the court to which an appeal was taken for violation of a municipal ordinance. He also has the power to pardon those convicted and sentenced by the recorder for violation of municipal ordinances. And, he has the power to authorize and direct the discharge on parole of any person under sentence for violation of a municipal ordinance without granting a pardon. Upon failure of a person to obey the terms of his parole, to be determined by the mayor, the mayor has the authority to direct the rearrest of such person who shall be taken into custody. This authority does not include power to remit forfeitures levied against sureties on appearance bonds by the recorder. (Atty Genl to Hon. Richmond McClintock, July 17, 1957)

As can be seen from the Chart at the end of this chapter, the citizens as voters actually control the destiny of the city by electing persons of their choice to guide and legislate and establish policy. The Council is the ultimate source of power in the Mayor-Council city. It can be said that the Council is a body of local representatives from each sector (ward) of the city brought together to pool their collective wisdom for guidance of the city. The success of the Council depends upon the sincerety used by the voters in their selection of the correct representatives for office and upon the willingness of those elected to give of their time, knowledge and experience.

In a large measure, the success of the Council's efforts depends upon the Mayor and the other officers and employees of the city who, under direct supervision of the Mayor, administer the policies and decisions of the Council. The Council should solicit the advice, recommendations and viewpoints of the Mayor who is the chief executive officer of the city under the Mayor-Council government. Both the Council and the Mayor should remember that the Mayor is also an elected official and represents strong viewpoints of the citizens, and to this end, it is of vital importance that communication between the Mayor and the Council be maintained at all times. By this, it is not being suggested that the Council should give the Mayor a free hand nor would it be in keeping with sound administration for the Council to invade the executive powers of the Mayor. Where differences arise a conference is suggested as a common meeting ground.

Even though the Council is considered the ultimate source of power, it may not adopt any ordinance or resolution requiring the Mayor to issue written instructions or orders to employees or officers of the city, nor may it require department heads to answer directly to the Council for their actions. The chart clearly shows the line or channel through which all administration of the city must travel. The Attorney General in a decision on Nov 5, 1957, to Hon. Chas E. McConnell has ruled further that the Council may not assume direct control over the Police, Maintenance (Street & Sanitation) or the Building Inspection Departments.

VOTING-QUORUM WITHIN THE COUNCIL. In cities of 12,000 or more population the President of the Council presides over the Council. The President of the Council is a member of the Council and is entitled to vote upon issues coming before that body but the Council President does not have a second vote in event of a tie. Remember too, that in cities of over 12,000 population the Mayor does not sit with nor vote on council matters so if there is a tie, the measure fails for the lack of the required majority. A majority of the whole number of members the city is entitled to have on the Council shall be necessary to constitute a quorum (Title 37, Section 429(2)). Insofar as Sheffield is concerned this would require five members since the total number of Councilmen authorized is nine, including the Council President. An exception to this requirement would exist where ordinances or resolutions vetoed by the Mayor have been returned to the Council. Such measures may be passed over the Mayor's veto but need a two-third (2/3) vote of the members elected to the Council by yea and nay vote, all of which must be spread upon the minutes of the Council meeting indicating by name each vote. All ordinances of a permanent nature fall in this category and when vetoed by the Mayor require 2/3 vote to override the veto.

No Councilman may vote on any question in which he, his employer or employee has a special financial interest at the time of voting or was so interested at the time of his election. Violation could mean removal from office.

There is no provision in the statutes which compel a councilman to vote on every issue called to question by the Council. A member can change his vote up to the time the vote is finally announced. After that he can only change it if approved by the entire Council present. It is wise to vote, since voters elect Councilmen to speak out for them, however, sometimes conflicts of interest whether moral or financial do become a factor.

While covering the more important aspects of duties of Councilmen we cannot overlook one very hard task which will befall each Councilman at some time during his term of office. Even though a Councilman may be

opposed to certain resolutions or ordinances which have been adopted by the Council, it is his duty to uphold the majority vote of the council and to give his wholehearted cooperation to the Mayor of the city when such resolutions or ordinances are passed down to the Mayor to be carried out.

It is contemplated that a room shall be made available to each Councilman at city hall where he may use same to read his official mail and carry on some of his required duty as a member of certain committees of the city. The city clerk's office personnel will assist Councilmen with administrative matters such as making official stationery available, looking up documents needed, obtaining official publications, verifying certain records, including minutes of previous Council meetings and furnishing financial information upon request. This room, though it will be used by other Councilmen should serve a useful purpose and will be available for consultation between citizen groups and their ward Councilmen.

MEETINGS OF THE COUNCIL. There must be at least two regular meetings of the Council, open to the public, each month. (title 37 Section 429(3) & Section 430, Code of Alabama) The time and place for the meetings should be set at the Council's first organizational meeting. The Sheffield Library and the Utilities Department have both offered their facilities for the purpose of an adequate meeting place for the Council.

Adjourned meetings are where the Council at its regular meeting may adjourn until a particular time. When an adjourned meeting is commenced, it is merely a meeting continued as though it were the original meeting.

Special meetings may be called when the President of the Council feels that public interest merits such a meeting. Also, two Councilmen or the Mayor may request the President of the Council to call a special meeting. This must be done in writing and if the President of the Council refuses to call the meeting, those making the request have the right to do so (Title 37, Section 430, Code of Alabama). Due notice of such a meeting is required to be given other Councilmen.

The Council has the right and the authority to compel attendance of meetings by Councilmen and it may prescribe penalties for not doing so (Title 37 Section 429(5) Code of Alabama) (See Title 41, Sections 212 & 178 Code of Alabama for types of penalties).

Since the President of the Council has the responsibility for seeing that the order of business at any Council meeting is is expedited, he must see that the meetings are orderly. An agenda should be prepared before each meeting by him and it should be distributed in advance to other members of the governing body; he should begin each meeting at the appointed time and stick to a time schedule as nearly as possible. Nothing discourages the attendance of the hard working, civic minded Councilman more than a long, drawn out council meeting which wanders from city business. It is wise to see that the press gets advance copies of the agenda. The Council President is the only person who can legally recognize citizens who are attending a meeting and who wish to address the Council. When large groups are in attendance, the President should request that one or two spokesmen speak for the entire group; he should maintain order and let no others speak while the Council is being addressed. In short, he must be a diplomat not only to his Councilmen but to citizens who are visiting for the purpose of being heard by the Council.

ORGANIZATION CHART FOR MAYOR-COUNCIL GOVERNMENT SHEFFIELD, ALA.

CODE
1 Full time, w/pay fr. City Gen. Fd.
2 Part time, w/pay fr. City Gen. Fd.
3 Separately funded, either by State, Federal funds, and or by appropriation from City Gen. Funds
4 Part time, no pay

CITIZENS ELECT 2 COUNCILMEN EACH FROM 4 WARDS OF EQUAL POPULATION PLUS ONE COUNCIL PRESIDENT AND ONE MAYOR FROM THE CITY AT LARGE.

COUNCIL OF 9 POOLS ITS COLLECTIVE WISDOM FOR GUIDANCE OF CITY. ENACTS ORDINANCES AND DETERMINES POLICY. IS THE LEGISLATIVE BODY OF GOVERNMENT. 2

NOTE: All Officers and Employees on this line are hired, fired and promoted by Civil Service board upon recommendation to the Council.

MAYOR SERVES FULL TIME AS CHIEF EXECUTIVE OFFICER CHARGED WITH GENERAL SUPERVISION AND CONTROL OF ALL DEPARTMENTS, PROGRAMS AND FACILITIES. MANAGES CITY AFFAIRS. 1

- Fire Department 1
  - Fire Marshall also Bldg. Insp
- Police Department 1
  - Recorders Court 1
    - Judge 2
    - Prosecution Attorney 2
- City Clerk's Office 1
  - Treasurer -Finance 1
  - License Inspector 1
  - Personnel Administrator 1
- City Attorney Council/Apptd. 2
- City Auditor Mayor/Apptd. 2
- City Engineer Council/Apptd. 2
- Street & Sanitation Department 1
- Cemetery Department 1
- Building Inspection Department 3
  - Code Enforcement 3
    - Electrical Inspection 3
    - Plumbing Inspection 3
- Urban Renewal & Community Development Department 3
- Utility Board (5) Council/Apptd. 3
  - Utility Department 3
- Board of Education Council/Apptd. 4
  - Schools 3
- Civil Service Board (3) Council/Apptd. 2
- Library Board Council/Apptd. 4
- Medical Clinic Board (3) Council/Apptd. 4
- Adjust & Appeals Board (5) Council/Apptd. 4
- Recreation Board (5) Council/Apptd. 4
  - Parks & Recreation 3
- Miscellaneous Regional Board Mayor/Apptd. 4
- Planning Board (9) 3 By State/6 By Mayor 4
- Citizens Advisory Board (5) Mayor/Apptd. 4
- Housing Author Board (5) Mayor/Apptd.
  - Sheffield Housi Projects

CHAPTER SEVEN
THE ORGANIZATIONAL MEETING

Certainly it is apparent that each of the two regular meetings required by statute to be held monthly are important and the manner in which they are conducted will have a lot to do with an orderly and successful term for each of the elected officials, but, we cannot overlook the importance of the first organizational meeting which must be held on the first Monday in October of 1976 for our new government by Mayor and Council. Each general municipal election year calls for the elected officials to gather for this type of meeting. It is what is simply implied, an organizational meeting. (Title 37, Section 429(1)). Bear in mind that another two *regular* meetings are required to be held in October in addition to the organizational meeting.

The city clerk's office should notify each elected official after he has been elected to the office (including the Mayor) concerning the time and place of this meeting. Each of the newly elected officials must be sworn in to their respective offices by having an oath administered to them, orally, by the city clerk. In addition, there are other important aspects to this oath which involve compliance with law. After the city clerk has administered the oath of office to the President of the Council, the President of the Council should then direct the city clerk to administer the oath of office to the other eight Councilmen and then to the Mayor. After a few remarks to the Council members, the Mayor would normally retire from the council room, at which time, the Council President should officially announce that the meeting is in order (if a quorum is present) and proceed to consider the following organizational business, which is listed below the information on oath of office.

This oath of office is required by Title 41, Section 24 and Title 41, Section 26, Code of Alabama, and is the same for the Mayor, the President of the Council and the other 8 Councilmen; they shall sign the oath; it is normally given, in public, at the first meeting of the Council in October following each general municipal elec-

tion as described above; any person who enters upon the duties of his office without first executing and filing the oath of office shall, upon conviction, be fined; the oath (signed in writing) must be filed with the Probate Judge of the County.

OATH OF OFFICE

"I, (*name of elected official*), solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the State of Alabama, so long as I continue a citizen thereof; and that I will faithfully and honestly discharge the duties of the office upon which I am about to enter, to the best of my ability, so help me God."

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With all the Councilmen sworn in, the meeting called to order by the President of the Council, the following is suggested as the agenda for this meeting:

1. Election of a President pro tempore by the Council.

2. By Council vote, establish a time and place when and where regular meetings of the Council will be held.

3. Adopt an ordinance establishing the rules of procedure to be observed in the conduct of its meetings. This should be prepared by the President of the Council and offered for adoption by him to the Council for its vote. Chapter 5, page 79 of the Handbook for Mayors and Councilmen and Title 37, Section 429 Code of Ala are highly recommended as guidelines for the type of ordinance and for other items that may be acted upon at this first organizational meeting.

4. The Council should then be notified by the Council President of his appointments to the standing committees. These appointments are generally made by the Council President, however, objections may be raised to any recommendation and same may be voted upon by the Council, if deemed appropriate by the President of the Council.

5. Other cities, with population over 12,000 generally appoint standing committees, consisting of 3 Councilmen on each committee, as follows:

(a) A standing committee called the Executive, Finance and Ordinance Committee composed of 5 Councilmen as follows: The President of the Council to act as Chairman and one Councilman from each of the four wards.

(b) A standing committee called the Police Department Committee, composed of 3 Council members.

(c) A standing committee called the Fire Department Committee, composed of 3 Council members.

(d) A standing committee called the Street, Sanitation and Cemetery Committee, composed of 3 Council members.

(e) A standing committee for Public Relations and for Liaison with all city Boards, composed of the following Councilmen: One Councilman from each of the four wards.

(f) All Councilmen should realize that they serve as members of the Urban Renewal and the Community Development Boards by virtue of their office, however, this should be a matter of appointment at the organizational meeting. Note that matters under the cognizance of the Building Inspection Department are under this Board, however, the administrative responsibility of that department rests upon the shoulders of the Mayor.

6. It is important to take note that the Mayor of cities with less than 12,000 population would make these committee appointments but since Sheffield has a population in excess of 12,000 persons the Council President makes these committee appointments. Each committee has the responsibility for the oversight of the municipal functions falling within its jurisdiction and makes policy recommendations to the council regarding these functions.

7. Following the first organizational meeting at which the standing committees are appointed, the first regular meeting would be the proper place at which the council, by vote, would make those appointments to various boards where the terms of various members have expired and to make the appointments of various officers to head up the department of the city. In cities of over 6,000 population, the Council must elect a city clerk-treasurer or a separate city clerk, a license inspector and another person as Treasurer. Remember too, that state statute calls for certain board appointments to be made by the Council and other to be made by the Mayor. The Council possesses a rather considerable power of appointment. It has the discretionary power to appoint an auditor. Moreover, the Council provides for a Chief of Police, a Chief of the Fire Department and the Superintendent of the Street and Sanitation Department. Officers, under Civil Service, are first appointed by that Board.

8. Salaries of all officers must be fixed by the Council and this action should be accomplished at the first regular meeting following the organizational meeting. (Title 37, Section 409, Code of Ala).

9. The Council has control and management of the finances and all of the property, real and personal, belonging to the municipality, unless otherwise provided by statute. (Title 37, Section 422, Code of Ala) There are no legal requirements that make it mandatory for a city to operate on a budget but municipal administration has become so complex that most of our cities have adopted the practice of operating on a budget. Budget is the process of financial planning. It involves detailed planning of revenues, expenditures and borrowing for a fiscal period. The usual practice is for the Mayor to submit recommendations amounting to a tentative budget for the coming fiscal year and then for the Council, in meeting with the Mayor as budget officer, to go over the propose budget item by item, after which the Council has the duty to adopt an approved budget. The approved budget should be ready for adoption, together with any required

ordinances for additional revenues or expenditures, no later than the first regular meeting of the Council.

10. The Council has the power to enter into contracts between the City and others and is authorized to adopt ordinances and resolutions which are not inconsistent with the general laws of the State.

CONCLUSION

Any newly elected councilman or mayor owes it to the voters who elect him to office, to immediately, upon his election begin studying the various local ordinances. He should study the applicable references to the Code of Alabama as it relates to the performance of duties by elected officials. The League of Municipalities in Mongomery, Alabama, can be most helpful to newly elected officials. Their two handbooks titled "Handbook for Mayors and Councilmen" and Selected Readings for the Municipal Official are highly recommended as good material with easy reading and understanding. Many more restrictions as well as powers are contained in state statute which have not been covered in this pamphlet. We have attempted, in logical sequence, to give you enough information and legal background to enable you to see the magnitude of the task of serving your city well.

The City of Sheffield now has the opportunity to forge ahead and once again develop the leadership which is so much needed in our Muscle Shoals area. You will find that if you are elected by the voters of your city to lead, guide and direct their affairs of government, a real deep rooted desire will grow to do the best job you can for them. Remember, there is nothing more sacred than the trust they have placed in you to represent them.

Council Proposes Sheffield Voting Wards - 2 July 1975 -

By BILL JARNIGAN
Times-Daily Writer

A proposed division of Sheffield into four voting wards for the impending mayor-council form of government has been presented to the city commission by the Muscle Shoals Council of Local Governments.

Each ward will contain an average population of 3,278 persons, according to the proposal by the MSCOLG Planning Division.

Ward One, with 3,279 persons, will include Southwest Sheffield, Rivermont, the village area, and the annexed area.

In Ward Two, there will be 3,245 people from Southeast Sheffield, the downtown business district and the industrial area south of Jackson Highway.

There will be 3,216 persons in Ward Three which will include Northwest Sheffield, which should have an increase in population when more Urban Renewal houses are completed.

The thickly-populated Riverbluff area in Northeast Sheffield will be Ward Four with 3,375 persons.

The proposed wards must be approved by the city commission and the Department of Justice before being put into effect.

The primary source of population distribution was taken from the 1970 census of Sheffield, which is divided into four census tracts, Richard Metcalf, MSCOLG planning director, said.

Other data sources considered were "existing land use maps and data, zoning information, enumeration districts information and traffic zone data as compiled by the State Highway Department during 1974," Metcalf said.

"It should also be noted that like socio-economic characteristics were considered as well as the fact that some wards should have more growth than others in future years," he said.

The commission must now consider the proposal, Mayor F. E. (Buddy) Draper said.

The MSCOLG had been chosen to draw up the proposal, because it is a non-political, unbiased group that had the necessary information and tools to design the ward division map, Mayor Draper said.

Draper also said that he was preparing an information pamphlet for voters and candidates about the mayor-council form of government and the wards.

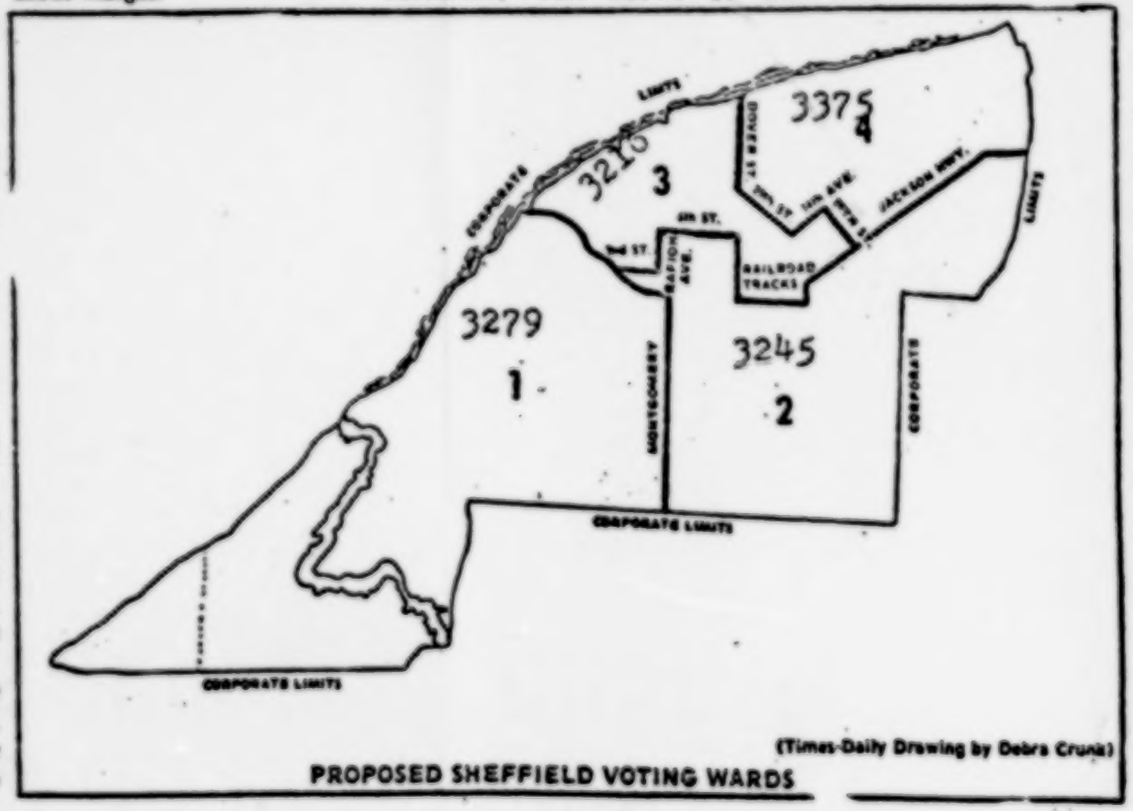
The wards, however divided, will be subject to revision with each new census, he said.

Sheffield will change its commission form of government to a mayor-council form on Oct. 1, 1976, after an election in August of that year.

Two councilmen from each ward will be elected at-large. A president of the council, to preside over council proceedings, will be elected at-large and can be from any ward.

The nine-man council will be the legislative body of the city. The mayor, who will have no vote in council proceedings, may veto permanent legislation. His veto may then be overturned by a two-thirds margin.

The mayor, who will also be elected at-large and will serve fulltime, will serve as administrator with various department heads coordinated under him.



(Times-Daily Drawing by Debra Crunk)

PROPOSED SHEFFIELD VOTING WARDS

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ing Commission.

Sheffield Change Gets Support

A proposal to change Sheffield's form of city government drew added support and some disagreement today from present and former city officials.

The change has been under discussion recently in official circles.

Wednesday, Mayor F.E. "Buddy" Draper said he would support a change from the commission form of government to a council.

"I would rather see the consolidation of the three Colbert County cit[illegible] Draper said today. "Since [illegible]ars to be a long way off, [illegible] support a change in Sheffield's own type of government to a council."

Public Safety Commissioner Don P[illegible]les also supported the idea. Huggles said the change would provide better representation of the city and would be a more efficient means of handling city affairs.

As proposed, the council would be composed of at least five councilmen from separate districts in the city and a full-time mayor.

Presently Sheffield city government is composed of two commissioners and a mayor, all of who are elected at large and not from separate districts.

Commissioner B.F. "Buddy" Walden said today he sees no advantage in changing from a commission form to a council.

"Considering the financial bind the city is now in, I can't see paying the added cost of additional people," he said.

The council form would mean an increase in the number of city governing officials.

Commissioner Walden, who is also a former mayor of Sheffield, pointed out that the proposal has been defeated by the voters in previous referenda.

(Continued On Page 2)

Area Lau[illegible]

"As ye d[illegible] these my br[illegible] Me..."

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Fler[illegible] temp[illegible] [illegible] S

Sheffield Change

(Continued from Page 1)

Three other former mayors of Sheffield today said they would support a change to a council.

Paul Saywell, a former mayor and commissioner, said "I was definitely opposed to it in the past.

"However, I'm now beginning to lean towards the idea."

Saywell said Birmingham's change to a council form several years ago seems to have improved the operations of the city.

He said he believes the full-time management of the city and increased representation could do the same for Sheffield.

Leonard Beard, who was a mayor and commissioner from 1948-1963, said city affairs have become increasingly complex, and "In my judgment, the time has come to give serious consideration to changing."

He said he believes a council could provide better representation and management of city business.

Lewis Timberlake, who was a mayor of Sheffield for five years, said "I believe it's an excellent idea. I would support it 100 per cent."

He added that the increased representation and management could "Be an answer to many of our problems."

State W[illegible]er

[illegible]s forecast

S[illegible]

Toda[illegible]

Muscle Shoals Com[illegible] Civil Air Patrol [illegible] senior members mee[illegible] at 7 p.m. at old T[illegible] Muscle Shoals Airp[illegible] R. Hardiman will d[illegible] Greek and Turkish

Princ[illegible] Corre[illegible] Stater[illegible]

Leighton [illegible] Principal J.H. [illegible] today that the predominantly bl[illegible] trustee was qu[illegible] Tuesday.

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Council Proposes Sheffield Voting Wards - August 2 1975 -

By BILL JARNIGAN
Times-Daily Writer

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The mayor, who will also be elected at-large and will serve fulltime, will serve as administrator with various department heads coordinated under him.

...Need For Consideration

A proposal to change the form of Sheffield's city government deserves serious consideration not only by the citizens of Colbert County's largest city but by those of surrounding municipalities as well.

Two of the three members of the Sheffield Commission—Mayor F.E. (Buddy) Draper and Public Safety Commissioner Don Ruggles—favor a transition from the commission form of government to that of mayor-council.

We are inclined to agree.

In fact, we venture the opinion that all four of our Quad-Cities have outgrown the three member governing body system.

Under the commission system, only two votes are required for passage of a city issue.

Under such a situation, there is little room for the wider representation allowed under the mayor-council government.

There has not been a pattern of "teaming" by any of the commissions so far, but under a two to one 'majority,' it is entirely possible.

A more divergent representation would preclude only two people deciding issues.

An example is Birmingham, the state's largest city, which was governed by a three-member commission until 1962 when the commission was abolished in favor of a mayor-council government.

There were three propositions on the Birmingham ballot:

1. Continuation of the three-member commission.
2. Full-time mayor and part-time city commissioners.
3. City manager and unspecified number of part-time council members.

The contest was not even close. The mayor-council plan was overwhelmingly approved.

Actually, the Birmingham vote was more of a move to oust the incumbents. All three of the commissioners were subsequently defeated when they ran for the council.

Such is not the case in Sheffield. Two of the three commissioners favor the change. The proposal getting the most official support in Sheffield would call for a full-time mayor and either five or seven councilmen.

Birmingham has a nine-member council, but, of course, Birmingham is a much larger city.

How has the Birmingham plan worked over the past 12 years?

"There is really no comparison," reports Ted Bryant of The Birmingham Post-Herald. "Without question, the mayor-council plan was the best thing to happen to Birmingham in years.

"Under the three-men commission, there were really no decisions — just agreements. There was rarely any difference of opinion."

Bryant and other knowledgeable observers firmly believe the city's residents are much better governed by the council, since the larger membership of the policy-making body brings municipal government closer to the grassroots.

Birmingham is but one example of hundreds of cities, large and small, which have benefited from abandoning the long-obsolete commission system.

Officials and citizens of all the municipalities in the Shoals area should take a long, hard look at the mayor-council form of government.

Thoughts

O great and mighty God whose name is the Lord of hosts whose eyes are open to all the ways of men, rewarding every man according to his ways and according to the fruit of doings — Jeremiah 32:19.

"Life is like a cash register, in that every ...

PAGE 5

Mayor-Council Club

Latest of major Alabama cities to change its form of municipal government is Montgomery.

The Capital City moves from its present three-commissioner governing body to mayor-council in October, 1975.

An election, likely next August, will be set by the Montgomery county probate judge and a mayor and nine councilmen will be named.

The council was substantially favored over the present commission, after a heated campaign, in what was considered an upset on the general election ballot last week. Thus Montgomery joins Birmingham and Huntsville among the larger Alabama cities to abolish the three-member commission governing body.

If Birmingham is an example, the change will be much fo the better.

Under the old commission, Birmingham was a troubled city, a city torn apart. Under the council, Birmingham has shown so much improvement that it has been designated an "All American City."

There is no question that a multi-member council, selected by districts or wards, provides the citizens with much better representation.

The commission designates specific duties — one member usually is in charge of public safety (police and fire), the other street and sanitation, the other finances, etc.

Council members are responsible directly to the people for all aspects of city functions.

Whereas the commission is tailormade for buck passing, i.e., 'that's not in my department,' the councilperson must be answerable for everything that goes on in city government.

There is a movement now underway in Sheffield to bring to a vote a proposed city government change.

Under consideration is a proposal to abolish the present three member commission and replace it with a fulltime mayor and eight councilpersons.

The city would be divided into four wards of equal population and two representatives from each would be elected by the city at large.

The elected mayor would not vote, but would be fully responsible to the council.

If approved, the new plan would become effective in October, 1976, with the current commission serving until then. The vote would be part of the August, 1975 city election.

Council, with members responsible to residents of their respective wards, brings government much closer to the people.

There are some segments of the population who have little or no representation under the commission system.

And the larger governing body, if nothing else, dilutes the possibility of cozy arrangements where two out of three votes can prevail in important decisions.

A petition is being prepared and will soon be in circulation, sponsors report.

Mayor-council certainly is an issue worth voting on.

State Tells DeKalb What To Do

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RESOLUTION

BE IT RESOLVED by the Board of Commissioners of the City of Sheffield, Alabama, that the City Attorney be, and he is hereby, authorized to prepare the notice of special election to be held on May 13, 1975, to vote on the change of government from the commission form to the mayor-council form and to duly advertise the same in accordance with the requirements of the laws of Alabama.

Passed and adopted this 4th day of March, 1975.

F. E. Draper, President
Board of Commissioners

Donald F. Ruggles
Commissioner

B. F. Walden
Commissioner

CERTIFICATE

I, E. S. Enoch, the duly qualified, acting and appointed City Clerk of the City of Sheffield, Alabama hereby certify the above and foregoing resolution was duly passed and adopted by the Board of Commissioners in regular session at the City Hall in the Commission Chamber on Tuesday the 4th day of March, 1975.

WITNESS my hand and seal of said City on this the 11th day of June, 1975.

/s/ E. S. Enoch
City Clerk

SEAL

DECLARATION OF RESULT OF SPECIAL ELECTION

WHEREAS, pursuant to notice heretofore given and pursuant to a proclamation heretofore made by Mr. Draper, in accordance with a law, a speical election was held in the City of Sheffield, Alabama, the question being whether the proposition to abandon the Commission form of government in said city and return to the aldermanic form of Government in said City as it existed in said city at the time said commission form of government was adopted, should be adopted, and

WHEREAS, said question was submitted to the qualified electors of the City of Sheffield, Alabama for said special election held on the 13th day of May, 1975, and at the regular voting places in the City of Sheffield, Alabana,

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the City of Sheffield, Alabama has on the 13th day of May, 1975, met in regular session in the usual place of meeting, and sitting as a canvassing board, has canvassed the returns of said election and declare the results of said election to be as follows:

BOX NO.	YES	NO
Box No. 1	90	89
Box No. 2	56	51
Box No. 3	90	59
Box No. 4	177	7
Box No. 5	138	72
Box No. 6	23	28
Box No. 7	149	61
Absentee		1
TOTAL	[illegible]	368

The Board of Comm[illegible] the City of Sheffield, Alabama sitting as such canvassing board, does hereby declare the results of such election to be in favor of the proposition to abandon the commission form of government and return to the aldermanic form of government as it existed at the time said commission form of government was adopted.

CERTIFICATE

I, E. S. Enoch, the duly qualfieid, acting and appointed City Clerk, of the City of Sheffield, Alabama hereby certify that the above and foregoing resolution was duly passed and adopted by the Board of Commissioners in regular session at the City Hall in the Commission Chamber on Tuesday the 13th day of May, 1975.

WITNESS my hand and seal of said city on this the 10th day of June, 1975.

/s/ E. S. Enoch
City Clerk

SEAL

STATE OF ALABAMA

OFFICE OF ATTORNEY GENERAL
MONTGOMERY, ALABAMA 36104

August 19, 1968

Honorable B. F. Walden
President
Board of Commissioners
City of Sheffield
Sheffield, Alabama

Dear Mr. Walden:

Reference is made to your request of August 7, 1968, for an opinion of this office, which reads as follows:

"A petition has been certified to me by the Judge of Probate of Colbert County, Alabama, pursuant to the provisions of Article 3 of Title 37 of the Code of Alabama. Said petition seeks to have an election called asking that the proposition of abandoning the commission form of government of the City of Sheffield be submitted to the voters of said city.

"The City of Sheffield has had a commission form of government since 1912, and it is essentially the form of commission government provided for in Title 37 and not by a special legislative act.

"At the time the commission form of government was adopted by Sheffield in 1912, the city had a mayor and aldermen form of government and was divided into four wards with eight aldermen (two from each ward). Since 1912 other areas have been added to the city's corporate limits and the population pattern has changed extensively.

"It is requested that you advise me of the following:

"1. When should the election provided for in Article 3 of Title 37 be called?

"2. In the event the voters of the City of Sheffield vote to abandon the commission form of government, how many aldermen would be appointed by the governor?

"3. How long would the officials appointed by the governor hold office?"

Your purpose will be better served if you have from me a general discussion of the applicable law rather than answers to your specific questions.

All elections held in the City of Sheffield must be conducted in accordance with Act No. 664, Acts of Alabama 1961, page 868, as amended by Act No. 166, Acts of Alabama, Regular Session 1965, page 233. See Quarterly Report of Attorney General, Volume 126, page 8. Act No. 664, as amended, supra, provides that notice be given by the Mayor of all elections held within the municipality. Under the provisions of Sections 3 and 4 of said statute, when the notice is of an election to be held on the second Tuesday in a month, such notice shall be published on or before the second Tuesday of the second month preceding the month in which the election shall be held. Opinion to Honorable Robert M. Field, City Attorney, City of Anniston, under date of May 2, 1968.

Therefore, the earliest date on which the election to abandon the commission form of government in the City of Sheffield may now be held is on October 22, 1968, and the notice of such election must be published on or before August 27, 1968.

The statutes which control the abandonment of a commission form of municipal government in this State are codified in Title 37, Chapter 4, Article 3, Code of Alabama 1940. In the event that the electorate of the City of Sheffield votes to abandon the commission form of government said municipality will return to the mayor-council or aldermanic form as it existed in said City at the time the commission form of government was adopted. See Title 37, Section 124, Code of Alabama 1940.

Therefore, in the event of such change the City of Sheffield will be governed by a mayor and eight alder-

men. Two aldermen will be elected from each of four wards.

It should here be pointed out that the commission of the City of Sheffield is authorized to divide said City into wards at any time not within three months of an election. See Section 5 of Act No. 664, as amended, supra. The City should be divided into four wards from which the eight aldermen may be selected. These wards should be substantially equal in population.

Act No. 71, Acts of Alabama 1959, page 477, should be considered in connection with your request. Under the provisions of said statute no change from the commission to the mayor-council form of government directed by vote of the electors of a municipality shall become effective until October 1 of the general municipal election year next following the election at which such change is voted.

General municipal elections were held in Alabama on August 13, 1968. Therefore, it is obvious that under the provisions of Act No. 71, supra, any change from the commission to the mayor-council form of government voted at the election to which your request refers will take place on October 1, 1972.

It should here be pointed out that in the event the change in the form of the government of the City of Sheffield, here considered, is directed by the electorate, the election to select a mayor and members of the city council should be held in 1972, under the provisions of Act No. 663, Acts of Alabama 1961, page 827, as amended by Act No. 404, Acts of Alabama, Regular Session 1965, page 582.

The provision for the appointment of a mayor and members of a municipal council by the governor found in Title 37, Section 126, Code of Alabama 1940, has been repealed by implication by Act No. 71, supra. See Quarterly Reports of Attorney General, Volume 111, page 78, and Volume 115, page 36.

We trust that the opinion expressed herein contains the desired information. If we may be of further service, please let us know.

Very truly yours,

MACDONALD GALLION
Attorney General

By /s/ Paul T. Gish, Jr.
PAUL T. GISH, JR.
Assistant Attorney General

PTGjr:dh

EXHIBIT 4

Dec. 22, 1975

Mr. Vincent McAlister
City Attorney
City of Sheffield
P. O. Drawer N
Sheffield, Alabama 35660

Dear Mr. McAlister:

This is in reference to the submission of the proposed change to the mayor-council form of government which was submitted to the Attorney General by the City of Sheffield, Alabama, pursuant to Section 5 of the Voting Rights Act of 1965 as amended. Your letter of October 21, 1975, submitting certain information requested by the Department was received on October 23, 1975.

Based on our examination of the information provided by you concerning the submitted change, the data is insufficient to properly enable this Department to fulfill its responsibilities under Section 5. Our analysis of the information provided by you indicates that the proposed change may not be consistent with Alabama law or an advisory opinion of the Alabama Attorney General. If that is so, the change would appear to be unenforceable under state law and, as such, would not be subject to Section 5 review. We must therefore request clarification of this matter.

The question is whether Title 37 of the Code of Alabama as amended required the City of Sheffield, in abandoning its existing commission form of government in favor of the aldermanic form, to revert back to the aldermanic form of government exactly as it existed in 1912 or whether state law authorizes the city to adopt the aldermanic form of government as submitted. If the City of Sheffield is required to adopt all aspects of the pre-existing aldermanic form of government as set out in the city's informational brochure, the city would be divided into four wards and be governed by a mayor

and 8 aldermen, 2 aldermen being elected directly from each ward. Your particular attention is called to the language of the proposition submitted to the voters in the City of Sheffield on May 13, 1975, and mandated by Title 37, § 124 Code of Alabama (1940), the provision that ". . . the general municipal law as the same existed prior to and at the time of the adoption of the commission form of government . . ." governs if the qualified electors vote in favor of the proposition, Title 37, § 125 Code of Alabama (1940), and to page 3 of the opinion rendered to B. F. Walden by Alabama Assistant Attorney General Paul T. Gish, Jr. on August 19, 1968, after the enactment of Title 37, §§ 34(22), 34(54) and 426, Code of Alabama (1973 Cum.Supp.). We note that no information, as requested in Item 3 of our letter of May 23, 1975, to Mayor F. E. Draper, has been provided as to whether there were, in 1912, numbered post, residency, majority vote or staggered term requirements for the aldermanic seats and whether single shot voting was prohibited.

If, on the other hand, the City of Sheffield is not required to adopt the pre-existing aldermanic form of government and is authorized to follow other provisions of state law, it appears that the city could be divided into four wards in which 2 aldermen from each ward would be elected to the City Council on an at-large basis, and a president of the City Council would be elected at-large. Title 37, § 426, Code of Alabama (1973 Cum. Supp.). State law further provides for numbered post and majority vote requirements in such aldermanic elections. Title 37, §§ 34(22) and 34(54), Code of Alabama (1973 Cum. Supp.).

In view of the foregoing, we must request that you clarify whether the submitted change is an enforceable one consistent with Alabama law. In providing such a clarification, please indicate the legal authority for your position including copies of any intervening opinions which may have been rendered by the Alabama Attorney General with respect to this question.

On the basis of a telephone conversation between Mayor Draper and Departmental attorney Sheila K. De-

laney on December 19, 1975, it was learned that the Sheffield City Commission has formally adopted the ward boundaries proposed in the informational brochure submitted by the city. If, after further examination, you believe the submitted change is an enforceable one, please provide the following information to assist us in reviewing the ward aspect of the proposed form of government:

1. A street map or one more detailed than the map previously submitted which shows the ward boundaries.
2. The population distribution by race for each of the wards. According to information provided by you, census tract data was used in defining the ward boundaries. Please indicate the census tracts which apply to each of the four wards as well as any other data which were used in estimating the racial population.
3. The location of the polling places for each of the wards.

It would also be helpful to our analysis if you indicated whether there have been any black candidates for city or county offices since 1965, and if so, the office and the number of candidates involved, and the election returns, by precinct if possible.

As you know the Attorney General has a 60-day period to consider submissions pursuant to Section 5 of the Voting Rights Act of 1965. This period will begin to run upon receipt of the requested additional information.

Sincerely,

J. STANLEY POTTINGER
Assistant Attorney General
Civil Rights Division

EXHIBIT 5

CITY OF SHEFFIELD
Sheffield, Alabama

May 3, 1976

Mr. J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division
Department of Justice
Washington, D.C. 20530

Dear Mr. Pottinger:

In re: City of Sheffield, Alabama—Section 5 of Voting Rights Act of 1965

Reference is made to your letter of December 22, 1975, in regard to this matter. Pursuant to the request contained therein, please find enclosed the following:

1. A detailed street map of the city showing the ward boundaries.
2. A letter dated April 30, 1976, from the Northwest Alabama Council of Local Governments showing the population by race of each ward. The census tracts used in defining the ward boundaries were the tracts used by the United States District Court in establishing the boundary lines for state house and senate districts in the reapportionment of the Alabama State Legislature.
3. The polling places for each of the wards are noted on the enclosed map with a boxed X.

All statutes of the State of Alabama were recodified and recompiled in 1940 with the official designation of the current state law being the Code of Alabama of 1940. Therefore, whether the 1912 law is identical to the 1940 recodification we do not know but think that it is and that the form of government being adopted by the City of Sheffield is the same as that which existed in 1912. Certainly the city is bound by the state law as it exists

at the time of the election for the change in the form of government. It is our opinion that the 1912 law is the same as the present law as to number of aldermen, residency and majority vote. The general election laws of the State of Alabama have changed through the years to meet various state and federal requirements.

It is our opinion that the submitted change is an enforceable one and is consisent with Alabama law. In this connection we refer you to Title 37, § 426 of the Code of Alabama of 1940 as amended. You will note there that this section of the law was first adopted in 1909 and subsequently amended in 1927 (term of office changed from two years to four years), 1931 (first proviso added), 1956 (last two sentences added). Also please see Title 27, § 34 (22) and (54) of the Code of Alabama of 1940 as amended. This section of Title 37 was added in 1961 and is controlling for elections in cities not having a commission form of government.

If you have any further questions concerning this matter, please feel free to call.

Yours very truly,

ALMON, MCALISTER & ASHE

By /s/ Vincent McAlister
City Attorneys

VMc:avw
Enclosures

NORTHWEST ALABAMA COUNCIL
OF LOCAL GOVERNMENTS

April 30, 1976

Mayor F. E. Draper
City Hall
Sheffield, Alabama 35660

Dear Mayor Draper,

As per your request, the population breakdown by race for your wards is as follows:

	Total Population	Black		White
Ward 1	3,307	50		3,257
Ward 2	3,245	2,222	68.5%	1,023
Ward 3	3,188	254		2,934
Ward 4	3,375	-0-		3,375
Total	13,115	2,526		10,589

If you have any question, please contact me.

Sincerely,

/s/ Bill Howard
J. WILLIAM HOWARD
Senior Planner

cc: Mr. Jim Sparks

Enclosures:

JWH/js

EXHIBIT 6

Jul. 6, 1976

Mr. Vincent McAlister
Almon, McAlister & Ashe
Attorneys at Law
Post Office Drawer N
Sheffield, Alabama 35660

Dear Mr. McAlister:

This is in reference to the change in form of government for the City of Sheffield, Alabama, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was received on May 5, 1976.

The Attorney General does not interpose any objection to the change to a mayor-council form of government. We feel a responsibility to point out, however, that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such change.

In reference to the proposed method of electing councilmen under the new form of government, the Attorney General has no objection to the proposed district lines or to the at-large election of the mayor and the president of the council. We are, however, unable to conclude that the at-large election of councilmen required to reside in districts will not have a racially discriminatory effect. Recent court decisions, to which we feel obligated to give great weight, indicate that the use of residency requirements, numbered posts, and a majority vote requirement in the context of at-large elections has the potential for abridging minority voting rights. See *White* v. *Regester*, 412 U.S. 755 (1973); *Whitcomb* v. *Chavis*, 403 U.S. 124 (1971).

Accordingly, on behalf of the Attorney General, I must interpose an objection to the implementation of the proposed at-large method of electing city councilmen.

Please be advised that you may request the Attorney General to reconsider his objection on the basis of information not previously available that shows that the

new method of election does not have the effect of denying or abridging the right to vote on account of race or color. See 28 C.F.R. Sections 51.21(b), 51.24 and 51.25. In addition, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the District Court for the District of Columbia that this method of election has neither the purpose nor the effect of denying or abridging the right to vote on account of race or color.

Sincerely,

J. STANLEY POTTINGER
Assistant Attorney General
Civil Rights Division

cc: Public File
V8341

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA,
NORTHWESTERN DIVISION

CA 76-M-1086-NW

UNITED STATES OF AMERICA, PLAINTIFF,

vs.

BOARD OF COMMISSIONERS OF SHEFFIELD, ALABAMA, ET AL,
DEFENDANTS.

September 3, 1976

BEFORE:

The Honorable Richard T. Rives, Fifth Circuit Court of Appeals.

The Honorable Frank H. McFadden, Northern District of Alabama.

The Honorable H. H. Grooms, Northern District of Alabama.

APPEARANCES:

Mr. Paul Hancock, Department of Justice, Washington, D. C.; Ms. Caryl P. Privett, Assistant United States Attorney, Birmingham, Alabama and Ms. Sheila K. Delaney, Department of Justice, Washington, D. C., for the Government.

Messrs. Vincent McAlister and Braxton W. Ashe, of the firm of Almon, McAlister and Ashe, Sheffield, Alabama, for the Defendants.

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WITNESSES:	*DIRECT*	*CROSS*	*REDIRECT*	*RECROSS*
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Sheila K. Delaney	46	50		

[3] PROCEEDINGS

THE COURT: Gentlemen, we call the case of the United States against the Board of Commissioners, Sheffield, Alabama and the answer of the defendants has just been filed. If there are any motions with respect to that answer, we will permit them to be filed within the course of the hearing or within the next day or so.

We would like to take the case on the merits for final decree. And the hearing will be on the case—on the merits and final judgment.

Are the parties ready?

MR. McALISTER: Yes, sir.

THE COURT: The plaintiff ready?

MR. HANCOCK: The plantiff is ready, Your Honor.

THE COURT: The defendants ready?

MR. McALISTER: Yes, sir.

THE COURT: Is there any evidence to be introduced?

MS. DELANEY: Your Honor, I am Sheila Delaney for the Voting Section of the Civil Rights Division of the United States.

The parties have reached some stipulations concerning the evidentiary matter before the Court but there are still some issues I think will require some testimony so the United States intends to present some limited testimony and such will not be too long.

[4] THE COURT: How about the defendants?

MR. McALISTER: Judge, we don't anticipate any testimony unless there are some questions come from the Court that have not been put into evidence or unless they raise something by their evidence that we think we should answer.

THE COURT: Any live witnesses to testify?

MS. DELANEY: At least one, Your Honor, yes, sir.

THE COURT: No requests for the Rule?

MR. McALISTER: No, sir.

THE COURT: All right.

It would be helpful to the Court if the parties would state their positions and introduce your stipulation so that the Court will understand the issues involved.

MS. DELANEY: Your Honor, we would like to

present a brief opening statement about the nature of the case.

THE COURT: If you will.

MS. DELANEY: Essentially, I think, Your Honor, this is a case to the Court on the Voting Rights Act, in particular Section V of the Voting Rights Act which I believe the Court understands applies to both Alabama and political subdivisions. And briefly, Section V requires that jurisdictions which are subject to the provisions of the Act which seek to administer or to enact a standard practical procedure which is different from that which was [5] in force and effect on November 1st, 1954 and seeks federal clearance in one of two ways. Jurisdiction may seek a declaratory judgment in the United States District Court for the District of Columbia and the change in question does not have an adverse racial purpose or effect or the jurisdiction involved may go before the Attorney General to seek a like determination.

The issue before the Court I believe is whether the City of Sheffield has enacted certain changes which are different from that which was in force and effect in the city on November 1st, 1954 and if so, whether those changes have been cleared in any one of the two prescribed methods.

I believe the evidence will show that the City of Sheffield maintained a commission form of government on November 1st, 1954. That subsequently, the city attempted to enact certain procedures which would effect a mayor-council form of government. That the city, pursuant to its obligations under Section V attempted to get preclearance from the Attorney General and the Attorney General objected to the at-large feature of electing the councilmen and that the city has failed to obtain any further declaratory judgment from the United States District Court in the District of Columbia and by virtue of that failure, it has not received federal pre-clearance and [6] therefore that change is unimportant.

THE COURT: Is there an issue as to whether or not the objection was filed within the 60 days?

MS. DELANEY: I believe the answer of the defendants filed this morning would suggest that that is an issue. The defendants, I don't believe, have any ground upon which to raise it.

THE COURT: The commissions were elected at-large before?

MS. DELANEY: Yes, sir.

THE COURT: So the council will be elected at-large in the present set-up?

MS. DELANEY: That's right.

THE COURT: But must reside within the district?

MS. DELANEY: The requirements—the Alabama Statute requires the councilmen reside in the particular ward they are to be elected from.

THE COURT: That applies to the commissioners also?

MS. DELANEY: I do not believe so, Your Honor. The only residency requirements are that they live within the City of Sheffield.

THE COURT: And now the residency requirements are that they live within the particular district?

MS. DELANEY: Yes, sir. I think I should say that by virtue of this particular set of facts that the United [7] States has no alternative but to seek a declaratory judgment since the changes in question have not received federal pre-clearance and since that is the case, the Court here is asked to join the implementation of those particular changes until some federal pre-clearance has been obtained.

I would like to wait for one other moment for one other issue, Your Honor, and that is that the jurisdiction of this Court, according to the Supreme Court cases, is very limited. The Court has an issue before it as to whether there is coverage under Section V and if so, whether federal pre-clearance has been obtained so it is really a coverage question and not a question of the merits of the case of whether or not the change has a racial purpose of effect. That particular determination is observed by statute to the Attorney General or to the United States District Court for the District of Columbia.

THE COURT: As I understand, you would question the jurisdiction of this Court—

MS. DELANEY: Well, I wouldn't question it but I would point out—

THE COURT: You would point out that this Court does not have jurisdiction even to decide whether the Attorney General decision was arbitrary?

MS. DELANEY: That's right, Your Honor.

THE COURT: They would have the right to review [8] that question in the D. C. Circuit.

MS. DELANEY: That's right.

THE COURT: And that is the only circuit in which they would have a right to review that?

MS. DELANEY: That is correct.

THE COURT: What is the function of this Court, to enjoin—

MS. DELANEY: I believe so, Your Honor. In other words, to determine whether the City of Sheffield has enacted changes which are within the purview of Section V and if so, whether the city has actually obtained pre-clearance through the Attorney General or through the United States District Court, District of Columbia and if not, then to enjoin the implementation of those changes until such time as the city has obtained pre-clearance or has obtained pre-clearance of any changes which are different from those which were in force and effect November 1, 1954.

THE COURT: Well, it is this time question that falls within our prerogative?

MS. DELANEY: Yes, I think it would, Your Honor. That is whether the Attorney Generaly has acted within the statutorily required period, I think is the question before the Court.

THE COURT: Not whether he acted arbitrarily?

MS. DELANEY: That's right, on the merits of the case.

[9] THE COURT: All right.

MR. McALISTER: May it please the Court, my name is Vincent McAlister and this is Braxton Ashe and we represent the City of Sheffield in this matter.

Let me say at the outset that I have got two involvements in this case, number one, I live in Sheffield, that is my home and number two, I am the lawyer for the city.

No lawyer was more amazed to find out that the Federal Government was interested in our city than I was. We are a town of 13,115 people. Approximately 19 percent of our city is black.

First off, I would like to say that I have substantial doubts as to whether the Voting Rights Act is even applicable to the City of Sheffield. The reason I say that is this, in our city and county, blacks have always registered to vote and have always voted. The Voting Rights Act did not register any blacks in Colbert County. Historically, the functioning of our registrars up there has been to register any black that came in there and wanted to register. So I say to you from a substantive standpoint, the Voting Rights Act, in my opinion is not applicable to the City of Sheffield. Now, the Act has broad language to the effect that it applies to any state or in any political subdivision of a state designated by the Attorney General. I can't find in any designation I [10] have seen where the City of Sheffield is designated. The State of Alabama is designated but I don't know that that necessarily carries with it the designation of all political subdivisions within the State of Alabama.

THE COURT: That is an issue we must decide?

MR. McALISTER: Yes, sir. The reason I saw that is because different areas of the state had different voting practices. As I say, in our area, blacks have always voted, they have always participated in the political process—

THE COURT: I think you should reserve that for closing argument.

MR. McALISTER: All right. That is a point that I would like to make.

The second point that I would like to make is if the Voting Right Act is applicable to the City of Sheffield, I would like to show to the Court and our defense would be that Section V on the Voting Rights Act did not apply to what occurred on Sheffield on this particular occassion for three reasons. Number one is that

since 1912, the City of Sheffield has had a commission form of government. That is a commission form of government of three commissioners. They are elected at-large throughout the City of Sheffield, requirements being that they reside in the city and they run for designated positions such as mayor, police and fire commissioner, street and sanitation commissioner.

[11] That was our form of government from 1912 until 1975 when it was determined by the City of Sheffield that they would like to change that form of government to a mayor-council or mayor-alderman form of government. Now, this change by the citizens of Sheffield was in accordance with the provisions of the general laws of the State of Alabama and the way that a citizen group goes about doing that is they circulate a petition and get signatures and they vote in the city to determine whether you want to change to the mayor-alderman from the commission form.

THE COURT: We on the Court have read very much of the record.

MR. McALISTER: All right. That occurred in this instance and in 1975 over a year ago, the citizens voted to change to the mayor-council form.

THE COURT: And the Attorney General didn't object to that?

MR. McALISTER: No, sir, only out of an abundance of precaution, not that we thought we were even subject to the Voting Rights Act but to keep everybody happy and to keep out of the trouble that we are in right now, we did notify the Attorney General that we were going to have this election and the Attorney General graciously wrote back and said, we don't have any objection to you having the election to change your form of government. Well, now, I [12] want to note right there that—

THE COURT: Just what did the Attorney General object to?

MR. McALISTER: Well, later on, a year later, the Attorney General objected to the at-large feature of our mayor-council form of government.

THE COURT: What was the difference between the at-large feature of the mayor-council and the one that—

MR. McALISTER: The only difference is under the commission form of government, you have got three commissioners. They run at-large. Under the mayor-council form, you have a mayor who runs at-large, you have a president of the council who runs at-large and we have eight aldermen or councilmen who also run at-large. They live in particular wards but must run at-large throughout the city.

THE COURT: Two from each ward?

MR. McALISTER: Two from each ward, yes, sir.

THE COURT: Isn't that all they objected to in this case?

MR. McALISTER: The at-large feature as I understand it, yes, sir.

THE COURT: Was that revealed in the commission to the Attorney General in March of 1975 when you placed before him the proposal to change the form of government?

MR. McALISTER: It was not revealed in the letter [13] of March, 1975 but Ms. Delaney is the Alabama specialist at the Department of Justice in the Civil Rights Division and she has handled this and is completely familiar with the Alabama election laws and has handled other elections in other cities the same size as Sheffield in the State of Alabama. So they were completely aware of what the Alabama law provided as far as who is elected at-large as far as mayor-council forms of government.

THE COURT: Let's limit the opening statement just to get down to the issues.

MR. McALISTER: Yes, sir, pardon me, sir.

One issue that I would like to point out and make clear to the Court is that once the City of Sheffield citizens voted in 1975 to change the form of government, that set in motion the machinery of the Alabama law requiring mayor-council elections in August of this year. In other words, when she voted to change, you set in motion the machinery for the change and nobody has any authority to stop that machinery. In other words, you become bound

to change and it is just a question of when your next general election is. So that is what occurred in our case. We voted for the change and then we started out this correspondence back and forth with the Department of Justice.

Now, in our answer and our contentions as to [14] Section V and its inapplicability here we first state—

THE COURT: Is that Section V quoted there, Mr. McAlister?

MR. McALISTER: I have it quoted in my memorandum, yes, sir. That is 1973(c).

THE COURT: What page of your memorandum?

MR. McALISTER: In substance, it is on Page 3 of my memorandum, at the bottom.

So our first contention is what we did in Sheffield did not come within the purview of 1973(c) or Section V of the Voting Rights Act.

Our second contention is that we were only implementing a law of Alabama which had been in force and effect in the State of Alabama since 1909, that established the different forms of governments for municipalities in the state and that we were only implementing a law that pre-existed the so-called Voting Rights Act of 1965. That is our second contention.

The third contention that we would make to the Court is that—and it might be put together into the—the third and fourth contentions might be placed together into one and that is, this is an equitable proceedings. The Department of Justice has come into this court seeking harsh, equitable remedy. That is, to interrupt a democratic election process in a political subdivision in this state [15] and we say that seeking equity they must meet the equitable maxims and the basic ones and they must come in here with clean hands themselves if they are going to seek equity and our contention is, they didn't come in with clean hands. We contend that they waited too late to come in to try to interrupt our election and that they knew in 1975 that we were going to this form of government and if they wanted to object, they should have objected then, but that they continued to drag us along and drag us along and to come in here the day before the

election and seek injunctive relief, we think it is too late and they are not entitled to it.

Now, our other contention along that same line is that we do think that this Court has jurisdiction to determine whether the action of the Department of Justice is arbitrary. We think this Court certainly has that jurisdiction. Otherwise, we would be subservient to the Department of Justice with no reins at all on it in this particular area. Now, all you can do in the Circuit Court in Washington, D. C. is seek a declaratory judgment. They make no determination about the arbitrariness of the action of the Department of Justice. We think in this case, they acted arbitrarily.

Our last contention is that after we had contined to make additional submissions to the Department of Justice pursuant to their request, that each time they would take the limit of time, they would take 59 days or 60 days and [16] on the last time, we say they waited too long, they took 62 days and we say that in waiting too long, past the 60th day, they are precluded from coming into this court at this time and getting injunctive relief under Section V.

Those are our basic contentions.

THE COURT: All right, we call on the plaintiff to introduce its evidence.

MS. DELANEY: Your Honor, at this time, I would like to present the Court with the original stipulation from the documents in support of those stipulations and also copies for the individual members of this Court.

I would like to add that there is a map attached to Exhibit No. 5 which appears only in the original exhibit and is not attached to the copies presented to the Court since we don't have any other copies.

THE COURT: That is this big map?

MS. DELANEY: Yes, sir, Your Honor, the map of the ward boundaries adopted by the City of Sheffield to execute the mayor-council form of government.

I would just characterize that evidence as essentially admissions by the parties as to the nature of the duties of the present members of the commission form of government and the attachment of the correspondence between

the Department of Justice and the officials of—or the representatives of the City of Sheffield which constitute the correspondence [17] between the parties as to the position and requesting additional information.

At this time, I think I would like to call Mayor Draper to the stand.

Before I call the mayor, I would like to offer the stipulation into evidence.

THE COURT: You offer the stipulation?

MS. DELANEY: That's right.

THE COURT: The stipulation will be received in evidence.

MR. McALISTER: Yes, sir.

F. E. DRAPER,

called as a witness, being duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (BY MS. DELANEY:) Good morning, mayor.

A Good morning.

Q Would you identify to the Court the capacity in which you serve as an official of the City of Sheffield?

A Yes, I serve as president of the commission of the City of Sheffield, having been elected and took office in October, 1972. This is the office which carries with it the title of mayor of the city.

Q Would you describe to the Court briefly, the [18] composition of the commission form of government, how many members it has and the manner in which the commission is elected?

A Yes, the commissioners are three in number, a president of the commission and a public safety commissioner who has under his control, fire and police departments and the street and sanitation commissioner.

They run for office each year and serve for three year terms. One commissioner coming up for election each succeeding year.

They are required to be residents of the city and they can live anywhere within the corporate limits and they are elected at-large.

Q How many votes does it take to pass an issue before the commission?

A Depending upon the type. Some issues by state statute require a unanimous vote but very few. The general run is a two-thirds majority.

Q Can you tell the Court now whether the City of Sheffield seeks to administer a form of government which is different from that which is presently in existence in the City of Sheffield?

A Yes, in May, 1975, by a vote of the people which resulted from a petition to change the form of government, by a vote of some 700 to 300 more or less, the electors of [19] our city voted in favor of changing the form of government from a commission type of government to a mayor-council or alderman type of government which required us to follow through with that procedure.

Q Could you describe briefly, much in the same way you described about the composition of the commission, what the composition of the mayor-council form is and how the members of the council and the mayor are elected?

A Yes, if I might say, Ms. Delaney, I sent to you this booklet which I wrote, which I think in detail covers all the aspects of our new form of government and this was written and given to our people, to all of our people through the school system so they would know what we were getting involved in at election time. We did this in July of 1975 and essentially what we told them in this booklet is that we will have a mayor who will serve full-time. In order to allow the mayor to serve full-time, it will be necessary that we comply with state statute, limitations for a mayor's salary and if we want him to serve full-time, it would be necessary that we pave the way for him to serve also in a capacity with our utility department. The state law says that if a mayor in the State of Alabama is also assigned colateral or additional duties with its utility department, he may then be required to serve full-time. We have effected all of those

changes and required ordinances within the [20] time limit specified by the law. So we will have a full-time mayor with a salary of $15,000.

We said that the mayor must be a resident of the city and I believe that he must be a resident—at that time and it may have been changed since but 90 days prior to the election. We said that he would be elected at-large and that he would be the chief executive officer of the city.

Relating to the council, we said that we would elect a president of the council, whose salary would be $200 monthly. A council would be required to meet twice monthly rather than once a week as the commission does now.

That the terms of office of all candidates would be four years. We said that the salaries of the president of the council—

Q Excuse me, may I interrupt just a second.

Does that mean that all the members of the mayor-council government would be elected at the same time?

A Yes, ma'am, for a four year term.

That the president of the council would receive a salary of $200 a month, $2,400 annually.

That he must have resided also in the city for the required length of time prior to announcing his candidacy. That he could come from anywhere within the corporate limits of the city and that he, like the mayor, would be elected [21] at-large.

As far as the eight other councilmen were concerned, we had the council of local government which we considered non-political in every sense to outline our new ward lines and, incidentally, they did that twice. Due to a suggestion I believe from you or from someone in your office that maybe we ought to try to follow some of the lines that had been established for the State Legislature, where we wouldn't have some variance. I may be wrong, it may not have come from your office but someone made a strong suggestion that we make those lines correspond to those lines that were set up by the Legislature for the Legislature itself so that the public would not be confused at election time.

Then after that was redone—was done by the Muscle Shoals council government in accordance with instructions of the laws that we saw which required that the lines be drawn up in equal population situations as nearly as possible and we drew up four wards with something over 3,000 persons in each ward.

And I would like to say here at this time that we gave most complete thought to the section of town which we call Southeast Sheffield, which is predominantly black and we did not split it up where half would be in one ward and half would be in another ward but put them all in the same ward but in order to [illegible] our population equally balanced, [22] it was necessary that we put some other few whites in adjoining sections of town into that ward to make our requirements on equal population work out.

We said that there would be two—

Q May I interrupt again?

Do you recall exactly when the city finally adopted the ward plan that you have spoken of?

A Well, I know we were most careful that we do it within the required time limit which was I believe, six months. Our city attorney was at the meeting where we did it and I believe we would have done that probably eight months before the election which would have set us back into December of 1975. This would be approximately—it would be a matter of record in the minutes of our commission meeting and I am not definitely sure.

Q Would the commission have passed some ordinance effectuating that?

A Yes, we did.

Q All right, continue.

A We stated that we would have two councilmen run from each ward with the requirement that they would live within the boundary lines as established by that ward. That the offices, place 1 and place 2, were just for setting forth that there would be two different people serve that ward and had no political or rank bearing at all. It [23]was just to distinguish between the two different councilmen that would be serving in any particular ward.

We stated that in accordance with Title 37, and I believe—I am not that well versed on Section 426 or something of that nature, but Title 37 of the State of Alabama laws state that if a city has seven or less wards and has a population which does not exceed 19,999, that it would be required that the council persons be elected at-large. And we followed that section of the state statute in setting this up.

I might add, that all along the way, Ms. Delaney, we —and I discussed on the telephone with you a number of times, all facets of this thing and sent you this booklet way back.

We got this booklet out to our people and we had no objections from the blacks up until the time the election came around and there was some evidence then that maybe the at-large thing would preclude some of them from being elected which seemed to bring this thing to a head in the final stages just before the election. But I think in all fairness, there was no objection from any citizens that I can recall, to me personally about the fact that these elections were at-large and we did not and I am just trying to say that we were above board in everything we did and we felt that we were doing what our people wanted us to do, including our blacks. We [24] set it up that way because the state statute says to do it that way and we published it and made it a matter of record and we sent you a lot of clippings about the information of the election that our newspapers carried prior to the election and while we were having petitions going and I think everybody was thoroughly informed. Of course, I am sure you don't want my comments but I have got to say what I believe and how I feel.

Q I would like to ask you, Mr. Draper, whether you recall whether there was a question which arose during the Department of Justice review of the changes in question as to precisely what Alabama law required in terms of the council?

A I recall a conversation with you on the telephone to that effect and I also—and I hope you have this recorded, if the Federal Government is still recording conversations, I hope you did have it recorded because

you will recall I said, for goodness sakes, whatever attitude you take about it, let us know because we are getting involved in this thing and we have just got to go on and continue the way we got it set and I believe you indicated that you would probably—sometime within your requirements, but I was getting ready to say that I feel to some extent, because I wrote this booklet and I pushed for a change in the form of government which is needed badly in our city, I feel that [25] the Federal Government is testing my character in this thing and I resent it, I really do.

Q Mayor Draper, I will ask you to direct your attention to Exhibit 3 that is attached to the stipulation we have offered in evidence and direct your particular attention to the pamphlet that you have been referring to?

A Yes.

Q In the first instance, I would like you to direct your attention to paragraph two of the preface and describe, if you will, in your own words, or the words of the preface, the description of the council, mayor-council or mayor-alderman form of government that existed in the city in 1912?

A Yes.

Q In that instance, how were the councilmen elected? Were they elected by persons of the entire city or elected directly by the ward?

A They were elected directly by the ward but at that time, Section 37 of the State Statute for Alabama did not go against that. Subsequent to 1912, state statute put in the requirement, that they be elected at-large.

Q Now, may I direct your attention to the declaration of results of the special election which is certified by the city clerk which is several pages beyond what you just referred to?

[26] A In this?

Q Yes, it is entitled at the top, "Declaration of Results of Special Election."

Would you read to the Court or describe in your own words, precisely what the proposition was before the voters when they voted in the referendum in May, 1975?

A "Special election was held in the City of Sheffield, Alabama, the question being, whether the proposition to abandon the commission form of government in said city and return to the aldermanic form of government in said city as it existed in the said city at the time of the commission form of government was adopted should be adopted.

"And whereas, said question was submitted to the qualified electors of the City of Sheffield," etcetera.

Q That is fine.

Now, would you refer you attention to Page 3 of the letter from the State Attorney General's Office to the then Mayor of the City of Sheffield, B. F. Walden, in which the question of the manner of election of the city councilmen was at issue and describe briefly what the Attorney General's opinion said with respect to how the voters of the City of Sheffield should elect the councilmen, if they abandoned the commission form of government?

That would be Page 3 of the letter from Mr. Gish to Mr. Walden on behalf of the Attorney General?

[27] A Letter dated August 19, on Page 3 and what was it now?

Q The second and third paragraph, I believe talks about the manner in which the City of Sheffield would be required to elect city councilmen if it abandoned the commission form of government and returned to the mayor-council form as it existed in 1912. Could you prescribe what the advisory opinion is with respect to how a councilman might be elected or should be elected?

THE COURT: Doesn't that letter speak for itself?

MS. DELANEY: I believe it does, Your Honor, but I wanted to indicate the questions that the Department of Justice had about the confusion that existed between what the pamphlet said and what the other documentary evidence said.

A What do you want me to do?

Q Well, just indicate what the Attorney General's opinion is?

A Well, I think it apparently says that we would change—would be governed by a mayor and eight aldermen, two aldermen being elected from each of the four

wards. Well, we had it nine and we had the question of the other commissioner which—I don't know why we had nine actually.

Can I ask my attorney why?

Q Perhaps, not at this time.

[28] A Okay. Then we divided the city into wards prior to the three months before the election and—

Q Mayor Draper, do you recall the letter or are you familiar with the letter—

MR. McALISTER: Excuse me, let me interrupt. Please let him finish his answer.

A I am trying to get the thinking here that this letter was to Commissioner Walden and I had seen it at the time we were working it up, you know, with our attorney and what have you, the new form of government and things that needed to be done.

Q Mayor, may I ask you, do you think the position which the city ultimately took with respect to adopting a plan for electing the councilmen was consistent with what the Attorney General's opinion said and what was also said in the proclamation with respect to the type of government the voters would go back to if they—

A Yes, ma'am, I think one is because we complied with state law which—whether or not it was in effect in 1912, it is in effect now and we were trying our best to do what current law was requiring us to do and it didn't make any sense to go back, for instance, and elect eight aldermen when you had to have—all governing bodies had to have an unequal number of people in today's world to make decisions in the nature of governing.

[29] I don't think any of us felt that every comma and period and crossing of T's back from things that were in 1912 had to be done specifically that way, particularly in view of the fact that current law in the State of Alabama stated otherwise. I mean when you do these things, don't you try to bring them up-to-date?

Q Well, the language of the statute and the referendum, did it not clearly state that the city was reverting—

A Yes, ma'am, it may have said that but I am trying o—

MR. McALISTER: Let me interrupt here and make this objection. If the Department of Justice is attacking the Alabama law, I would like to have that as their statement of position here because it is my understanding there is no contest but that we followed the Alabama law to the letter in everything that we did.

Now, if you are quarreling with what the Alabama law provides, I think that should be in one of your positions.

THE COURT: You are objecting to this evidence?

MR. McALISTER: My objection is that this is irrelevant and immaterial to any issue raised by the Department of Justice heretofore.

MS. DELANEY: That line of questioning for the purposes of that question was raised because Mayor Draper in his earlier testimony indicated the Department of Justice [30] as early as March, 1975 was perfectly familiar with the procedure and the method by which the councilman form of government would be elected. I think the line of questioning we have developed indicates that we were clearly not certain as to the method by which the city was required under Alabama law to elect councilmen and I believe it was a legitimate inquiry in view of the apparent inconsistency between what the State Attorney General's opinion says and the literal language of the referendum that went before the voters and even language in the pamphlet developed by the city as a means of educating the voter about the change and we simply wanted to clarify and wanted to have an understanding of the legal basis on which the city was acting in the change to make sure it was in compliance with Alabama law.

THE COURT: The point being, you take the position that the Attorney General of the State indicated election by district as opposed to at-large? Is this the crucial point?

MS. DELANEY: Well, it indicates that there was an inconsistency between the position of the State Attorney General and what the city was pursuing and it was submitted by the city on behalf of its position that the

changes should be under the general law of the state with the proper procedure—

[31] MR. McALISTER: I have difficulty in understanding the position of the Department of Justice, is it to seek compliance with the Voting Rights Act or is to determine whether or not a city is properly applying state law. I think that is—those are two different questions. I don't think it is the prerogative of the Justice Department to come in and say whether or not a city is properly applying a state law or what the interpretation of the state law is. Their limited purview, according to my understanding of what they said in their opening argument, was that we didn't comply with Section V of the Voting Rights Act. Now, the Alabama Statute and laws are for judicial knowledge and they are there.

MS. DELANEY: However, under federal law, this Department of Justice is not permitted to review changes unless they are legally unenforceable under state law so that there is a question about whether the change was legally enforceable under state law, then I think the Attorney General had to determine whether he had review power to begin with.

THE COURT: The Court thinks that the evidence should go on in and that you should then argue the issues.

MR. McALISTER: All right.

MS. DELANEY: Your Honor, I am simply trying to indicate, and I hope I have indicated today that the [32] commission as it came to the Department of Justice, was simply confused. We didn't know whether the city was following or under what legal procedure or what legal authority the city was acting and we tried to clarify—

THE COURT: I think we understand but that is a matter to be argued.

Q Mayor Draper, I would like to pursue another line of inquiry at this point.

Can you advise the Court whether the city has sought a declaratory judgment in the United States District Court, District of Columbia, that the changes in question—

A Not to my knowledge, we have not. When your letter was received after our deadline date for candidacy, indicating we had the right to do so, we were not contending anything with you and we thought you were saying if you take exception to what we are saying then you ought to go on and do this but you did not direct us to.

Q But to your knowledge, the city has not sought a declaratory judgment?

A Not to my knowledge.

Q Mayor Draper, can you now tell the Court or describe to the Court the manner in which the August 10, 1976 municipal elections were conducted for each of the offices involved, the mayor, the president of the Council and the councilmen, how were candidates required to run at that time?

[33] A Just as we stated in the pamphlet which is a matter of record, I guess. There were no changes whatsoever from the way we had set it up and advertised it to be to the public and no difference in the manner that I discussed with you on numerous occasions and you said your department didn't know what we were doing and I discussed it with you and you know I have, that we were going to do it at-large.

Q Would it be correct then to state that the councilmen election was conducted on the at-large basis?

A Yes.

Q Mayor Draper, I would like to call your attention again to the exhibit before you, attached to the stipulation and ask you to direct your attention to the letter of May 23rd from Mr. Pottinger to yourself. I believe the letter refers to the Attorney General's decision not to interpose an objection to the referendum?

A What date was that?

Q I believe it was May 23rd, 1975. That would be Exhibit No. 2 attached to the stipulation?

A Yes, I have that.

Q Could you tell the Court whether the Attorney General advised the city that the changes in the form of government was a change within the purview of Section V?

A The Attorney General does not interpose objection to holding the referendum. We feel it is our responsibility [34] to point out Section V of the Voting Rights Act, the failure of the Attorney General to object does not bar subsequent judicial action to enjoin the enforcement of same.

Q What about the—not the act but the referendum itself, the change from the mayor to the mayor-commission form of government?

A Well, do you know what paragraph that is?

Q Paragraph three.

A Yes, ma'am, you say that it is subject to preclearance requirements of Section V.

Q Can you tell us on what date the city then responded to that notification it was subject to Section V pre-clearance being submitted, information regarding that change?

A I don't have that. My Attorney has our file.

Q All right, examine Exhibit No. 3. It would be a letter from Mr. McAlister to Mr. Pottinger?

A What do you want me to do, just read the date of the letter?

Q Yes.

A October 21, 1975.

Q Can you estimate approximately how many months it took for the City of Sheffield to respond to the Department of Justice?

A Well, I thought our conversations we were having [35] on the telephone during that period of time were progressing rather well and we were keeping you informed.

Q I would refer you back to the letter of May 23rd and request that you indicate whether the Attorney General--whether Mr. Pottinger on behalf of the Attorney General, requested the city submit information on behalf of any submission, to submit it to the Department of Justice. Did Mr. Pottinger ask for certain information in support of the position?

A If you have any question, do not hesitate to call Ms. Delaney, which I did.

Q What about the items starting on Page 2, items one through five?

A Yes.

Q Were they requests for information about the kind of changes that would be made?

A Well, I don't have at this point—well, we discussed this in our commission meetings and we received this and we turned it over to our city attorney and I just don't know now at what point he did whatever requirements, you know, were there or not.

Q How many months would you estimate occurred between the time of the Attorney General advising the city of its obligations under Section V with respect to changing the form of government and the time that the city responded with [36] the information?

A I would say upon receipt of this letter, I called you and that we had some lengthy discussions about it on the telephone, Ms. Delaney. And I kept you apprised that we were getting this and that and you said be sure to send us all of the newspaper clippings and a lot of other things that were required by this thing.

Q Those particular pieces of documents that are in evidence?

A Yes, and at that time I told you I was going to write the booklet and give it to you and we did. I sent you a copy of that without even a letter and I think our attorney sent one as part of our submission.

Q Did your attorney send that information to the Department of Justice on October 21st, 1975?

A According to this letter, he did but I think I sent you a copy of the booklet long before that time, if I might say so.

Q I will refer your attention to Exhibit 4 which requests information again from the city and ask you the date of that letter?

A Exhibit 4? December 22.

Q Describe briefly to the Court what that letter reflects?

A This letter was not addressed to me but to [37] Mr. Vincent McAlister, our city attorney.

Q Are you reasonably familiar with that letter enough to comment on it?

A To the extent that the city attorney called me and told me that he had received the letter and that in his estimation, it did not preclude us from holding the election. It merely states that your department might have an objection to it and if we didn't concur with what you said that we should file something in district court in Washington.

Q Did the letter of December 22nd, 1975 ask for clarification of the matters as to how the city councilmen would be elected under the plans?

A Well, I will have to read it to find out because I have not seen this particular letter. It was, as I said, addressed to our attorney and was in his files.

You want to know if it says—

Q If it requests clarification of certain information with respect to how the city councilmen are going to be elected under Alabama law and what the—

A Well, you state that there is a question whether Title 37 is abandoning the existing commission government but nowhere in here it tells us we have got to stop our election or that we can't proceed or that you are not going to—you know, what you are going to do or not going to do.

Q That's right. Was there also a request for [38] information about the action the Board of Commissioners took with respect to establishing the wards in December, 1975?

A You referred to a letter which was to the other mayor, Mayor Walden and we note that no information is requested in item three of our letter of May 23rd to Mayor Draper, has been provided us to whether in 1912 there were numbered votes rather than the majority vote —I will say this, I believe Mr. McAlister had at his disposal that information and I was not—at this point in time, December 22, 1975, I had informed my commission that I would become a candidate for mayor and that I felt being such, that I should divorce myself from all matters and did so.

Q Would you refer to Page 3 of the letter and indicate whether the Department asked the city to present certain information about the ward boundaries that were finally established in December, 1975?

A The street map shows the ward boundaries, population of the areas by race, according to the information from the census and so forth.

Q Mayor Draper, would you refer to the city's response to that letter which would be Exhibit 5 and indicate the date of that letter?

A May 3, 1976.

Q Can you estimate the length of time it took the city to respond to that request for information? How long [39] it took?

A December 22nd, to May, 1976. This is in writing. It didn't take that long. You had copies of the booklet which showed those ward lines, streets and everything in that booklet that we sent to you. I hope somebody read it.

Q The booklet was dated what date?

A July 4, 1975.

Q And what was the date the city finally adopted—officially adopted the change?

A I would have to look at the record to see.

Q Did you indicate earlier today that the city probably acted in December, 1975?

A Probably. I know at the time we did it, we were trying to be sure that we came in the time limit requirements which said that it had to be done in a certain amount of time before the election and I know we met those requirements.

Q Are you familiar, Mayor Draper, with the guidelines promulgated by the Attorney General for review of Section V submissions?

A You sent me a pamphlet, I believe, which had some of those which I immediately gave to our attorney to use as he saw fit in making his report.

Q Are you familiar with the fact that those guidelines permit jurisdiction which is covered by Section V to request consideration—

[40] A I might not have done it in writing but I sure talked with you enough on the telephone and showed you my concern that if you had any objection to let us know in plenty of time.

Q In that event, what would account for the delay between the time that the city—

A The assumption that the pamphlet we sent you was sufficient.

Q How did you interpret then the request the Department made to the city?

A Nowhere along the line, Ms. Delaney, did you come to us and say, look, you can't hold this election. You do this. You didn't direct us to do this or direct us to do that and we were presuming that the conversations we were having verbally on the telephone and whatever we were doing otherwise in writing and the actions we were taking in our commission were sufficient.

MS. DELANEY: Thank you, I think that concludes the testimony.

CROSS EXAMINATION

Q (BY MR. McALISTER:) Mayor Draper, you have stated in your testimony that you had more than one conversation with Ms. Delaney here?

A Yes, sir.

Q Do you recall or can you give us an estimate as [41] when the first conversation was that you had with her, the approximate time?

A It was sometime before the—sometime after the petition was turned into us by the people. Sometime after that meeting, I don't know just exactly when.

Q It would be your best estimate sometime in the summer of 1975?

A I would say yes.

Q At that particular time, was Ms. Delaney aware or did you advise her that the councilmen would be elected at-large within the city?

A I don't know that I did at that time, however, I sent her some of the questions and answers that we had made a part of the petition when we circulated the peti-

tions to see if the people were interested or not which contained that information.

Q Mayor Draper, in all of the procedures followed by the City of Sheffield, in both conducting the referendum to determine whether or not there would be a change from the commission to the mayor-council form, as well as the date of the election in 1976, August 10, the qualification of the candidates, the fact they ran at-large, the fact that they were numbered positions, to your knowledge, were all of these requirements of the laws of the State of Alabama?

A To the best of my knowledge.

[42] Q And to your knowledge, did the city endeavor to comply to the best of its knowledge with what the requirements of the Alabama law were?

A Yes, sir.

Q And wasn't the question on the ballot when making the switch from the commission to the mayor-council form of government, wasn't that the question set out in the Alabama Code that must be on the ballot?

A Yes, sir, according to you. I didn't follow it but that is what you said.

Q Mr. Draper, to your knowledge, during the years that you have been familiar with the City of Sheffield and your study of the history of the city, to your knowledge, has there ever been a black candidate for any commission office in the city?

A Not until now.

Q In the most recent elections which were the ones implementing the mayor-council form of government, were there black candidates offered?

A Yes.

Q How many?

A I believe there were four.

Q Have any of those been elected at this time?

A No, on the at-large basis, one got quite a number of votes and was defeated by about 200 and another is in the [43] run-off.

Q You have one black candidate in the run-off?

A Yes, sir.

Q One of the councilmen?

A Yes, sir.

Q And when is that run-off scheduled?

A September the 14th.

MS. DELANEY: May it please the Court, I object to that line of questioning on the ground it is irrelevant to the issues before the Court as to whether or not there is coverage and whether or not—

THE COURT: Objection overruled. We will give you so much latitude and we will let the evidence come in and the Court may disregard it.

MR. McALISTER: I believe that's all.

MS. DELANEY: That's all.

THE COURT: You may come down.

(Witness excused)

THE COURT: Any further evidence?

MS. DELANEY: At this time, I would like to present to the Court an affidavit signed by Mr. Jones of the Department of Justice which indicates basically the number of submissions under Section V which have been reviewed by the Voting Section from the year 1965 up to the present time as an indication of the workload that is before the Department [44] under Section V.

MR. McALISTER: We will object to that, Your Honor. I would like to make a submission of my workload.

THE COURT: Is this a justification for the failure to respond?

MS. DELANEY: That is correct, Your Honor. There is an allegation that the Department has been untimely in its response to the information that was submitted to the Department and I offer that simply as an indication of the—

THE COURT: I remember a case in the city of Houston—Dothan, Alabama, in which the Supreme Court of Alabama passed on that matter and held that the workload of the Department, the Attorney General's Department was not adequate to set aside the time element.

Is that what you are trying to do, set aside the time element?

MS. DELANEY: Oh, no, not at all. As far as the Department is concerned, the Attorney General acted in a timely fashion in the period that was required in the guidelines. But it does indicate that there is, particularly in the last two years, a heavy workload and that may explain the actions of the Attorney General in terms of later response.

MR. McALISTER: Judge, I don't know whether they multiply the lawyers like they multiply the workload or not.

[45] THE COURT: Well, whether this is relevant or not is very questionable but if it is relevant, the witness could be cross examined about it.

MS. DELANEY: Well, Your Honor, I think it may fall under the Hearsay Exception of the document that you prepare in the regular course of business and as the affidavit indicates, the Voting Section does keep the number of submissions on review and I would think it would fall under the exception to the Hearsay Rule.

THE COURT: This is not an official record of the Department. It is an affidavit for this particular case and the Court would hold it isn't relevant.

MS. DELANEY: Thank you.

Your Honor, I don't believe the Government has anymore evidence.

THE COURT: How much time do you gentlemen and ladies wish for argument?

MR. McALISTER: Judge, I would like to call Ms. Delaney to the stand for a few questions, if I could.

THE COURT: All right, you may make objections to the attorney's questions while you are testifying.

MR. HANCOCK: If Your Honor please, my name is Paul Hancock and I am also a lawyer with the Department and on the lawyer's behalf, I would like to enter an objection to her testifying. She is counsel of record in this [46] proceedings and the attorneys for the defendants have offered no basis for her testimony. It is an unusual procedure calling counsel of record.

THE COURT: In the conversations with the mayor and the examination of the mayor, it has been disclosed

a good many conversations occurred between Ms. Delaney and the mayor.

MR. HANCOCK: I would have no objection to her testimony being limited to those conversations and her review of the subject.

THE COURT: Any particular thing that you object to that comes up, but as far as her testifying as a witness, your objection is overruled.

SHEILA K. DELANEY,

called as a witness, being duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (BY MR. McALISTER:) Would you state your name, please?

A My name is Sheila Delaney.

Q Where are you employed?

A By the Voting Section of the Department of Justice.

Q Are you a practicing attorney?

A That is correct.

[47] Q Licensed in the District of Columbia?

A Licensed in the State of Virginia.

Q Do you have any sub-specialty within the Civil Rights Division of the Department of Justice?

A I work in the Voting Section and help enforce the Voting Rights Act and my specialty is voting legislation.

Q Any particular state?

A I am assigned to work in the State of Alabama or I am primarily responsible for the State of Alabama, California, the State of New York and some other states.

Q In that particular assignment, you, of course, are familiar with the laws of the State of Alabama?

A That is correct, at least some of them.

Q And you have an Alabama code?

A Yes, sir, that is correct.

Q And you read that code from time to time?

A That is correct.

Q So that you do get the submissions that come to the Department of Justice from cities in the State of Alabama relevant to the Voting Rights Act of 1965?

A I used to, I do not anymore.

Q But you did get the City of Sheffield submission?

A That is correct, initially, I did.

Q And you had received other submissions prior to that from other cities in the State of Alabama?

[48] A That is correct.

Q You were familiar when you received the first notification from the State of—the City of Sheffield as to the form of government relative to commission to the mayor-council form?

A I don't think that is correct. As I recall, the letter that we received from Mayor Draper indicated the city would have a referendum to determine whether to abandon the commission form of government and go to the mayor-council form and as I recall the mayor in his letter indicated the legal authority under which the City of Sheffield would act in pursuing this referendum and referred to Chapter 3, Article IV or the code which talked about the procedures which the city went through in having the referendum to determine whether there would be a change in the form of government or abandonment of the existing form but I don't think it is correct to say that I knew at that time or the Department knew at that time what the city—the kind of government the city would have in a particular sense at that particular point.

Q But you had other submissions from other cities changing from commission to mayor-council form of government from Alabama, hadn't you?

A I am not sure I did.

Q You had Talladega?

[49] A Talladega was—I believe and I am afraid I don't have the record here to substantiate this but as I recall, I believe you are right in that Talladega did change from a commission form to a mayor-council form but I believe it did that before I came with the Department of Justice. I did review other changes by the City of Talladega with reference to the councilman election.

Q Did you have Dothan?

A No, sir.

Q Fairfield?

A Yes, sir, I had—as far as Fairfield was concerned, I don't recall whether a change was from a commission to a mayor-council but they did have some change in—I think the change I reviewed in Fairfield was an annexation.

Q But you did have access to the [illegible]na Code?

A Absolutely.

Q And you are familiar with Title 37 of that code as it applies to municipalities?

A I am familiar with portions of it, yes.

Q All of the letters that have come over the signature of Mr. Pottinger to the state, to the City of Sheffield, those letters were drafted by you?

A That is not correct. Some of those letters were suggested and were signed over his signature but not all [50] of them.

Q Did you have to approve those letters?

A I essentially drafted the basic replies, I think, but not all of the letters.

MR. McALISTER: I believe that's all.

CROSS EXAMINATION

Q (BY MR. HANCOCK:) Ms. Delaney, when you received the original submission by the City of Sheffield, dated March 20, 1975 and attached to the stipulation as Exhibit 1, in that submission or any other time thereafter, did the city request expedited consideration of the proposal of conducting the referendum?

A It certainly did not request it in writing. Mayor Draper indicated he may have requested it by—in a verbal sense if I recall his testimony correctly. I don't recall whether it is true or not but the proper procedure for requesting expedited procedure is to request it in letter form.

Q And do I understand the testimony to be that you sent him a pamphlet that contained the regulations that set out the procedure to be followed?

A I believe that is what he said.

Q Is that correct?

A I don't know for a fact but it is common procedure for the Department to send jurisdictions copies of the [51] guidelines. I probably—if I did, I put it in an envelope with a note and didn't send the letter or anything like that.

Q And during the time limit that is allowed by the Voting Rights Act and by the regulations that have been adopted pursuant to the Act, is it correct that the Attorney General—Mr. Pottinger, on behalf of the Attorney General sent a letter to the city stating that the Attorney General would not object to the holding of the referendum election?

A That is correct.

Q And in that letter, I believe, you—which is attached as an Exhibit No. 2, certain information was requested from the City of Sheffield and did you help prepare that request for information?

A That is correct.

Q And according to the record before the Court, it took the city five months to submit that information to the Attorney General. At any time during that five months, did any city official communicate with you the need for expedited consideration or reasons for the delay in submitting the proposal to the Attorney General?

A As I said, I don't recall whether Mayor Draper actually asked for an expedited consideration of the guidelines. He did make it clear the city was interested in this new form of government and it was very clearly interested in proceeding along getting clearance but whether or not the [52] mayor actually asked for expedited consideration, I don't recall that.

Q But it did take five months to submit the proposal?

A Yes, sir.

Q Did they at any time indicate to you that they were considering electing going before the three judge district court in Washington?

A Not that I recall.

Q When the submission was sent to the Attorney General, which is attached to Exhibit 3—do you have a copy of the stipulation?

A No, sir.

MR. HANCOCK: May I have it, Mr. Clerk?

Exhibit 3, is it a correct statement that is the Section V submission presented by the City of Sheffield?

A In response to our letter of May 23, yes.

Q And within the 60 days allowed by the guidelines, did Mr. Pottinger request additional information?

A Yes, he did.

Q Would you explain to the Court the reasons that additional information was requested from the city? I don't mean for you to state necessarily to the letter but the problems you had, if any, in reviewing the submission and why you needed additional information before you could determine whether the proposed change would have the effect [53] prescribed by the Voting Rights Act?

A Well, I think the answer to that is two-pronged. I think there has been earlier testimony which indicated that the submission by the city was confusing as to the basis upon which the city was acting insofar as the election of the councilmen was concerned and whether the councilmen should be elected on a district basis according to the state law and Alabama Statute or whether it was permissible under Alabama law for the City of Sheffield to conduct elections under the general law of the state as provided in Title 37, Section 426 and that has been set out in some detail in our letter asking for additional information.

The other reason for our request was that the city in December, 1975, had finally acted to adopt the ward boundaries and we asked for information about the racial composition of the wards which was part of the overall plan for the mayor-council form of government. And that was not done until December and that change was not final until we asked as we typically do, on submissions of this kind, for information along those lines.

Q And is it correct to state that you were then confused at the time of the original submission as to whether the councilmen would be elected at-large or by district?

A I don't think in the original submission, if you characterize the original submission as the referendum.

[54] Q I was referring to the original—I wasn't referring to the submission of the referendum but rather the submission of the actual change?

A That is correct.

Q In enforcing Section V, would you explain the policy of the Office of the Attorney General as regards the finality of the enactment?

A Well, the Department has taken the position, I believe, as set forth in the regulations here, the Code of Federal Regulations, that the Department will not review any changes until those changes are final and capable of administration under the law. In other words, we wouldn't review an annexation that was under advisement, for example, by the City Council. We would wait until the City Council had taken final action and annexed property or whatever. We would wait until the jurisdiction has taken final action and was capable of administering that particular change under state law.

Q So if the city would submit a proposed change which said to the effect that they wish to have a referendum election to determine whether the form of government would be changed, would you consider that a submission of a referendum or the submission of a change in the form of government?

A Change in the referendum or change—I mean the [55] referendum would be the change. Not the change of government.

Q And then you would—the actual change would have to be later submitted?

A That is correct.

Q And people vote to adopt it?

A Yes.

Q After the letter was sent, which requested more information to clear up the questions that you had that

you just testified to regarding the change, that was sent in December, 1975, is that correct?

A That is correct.

Q And it was not until May of 1976 that you received that requested information, is that also correct?

A We received it on May 5, I believe.

Q Did the city at any time notify you by telephone or otherwise as to the reason for the delay in complying with that request for additional information?

A I think at this point, my responsibility for this submission ceased but to answer your question, I don't recall having any conversations with officials from the city wherein they asked for expedited consideration. I will say that I did speak to Mr. McAlister, who called inquiring about the status after the submission had been made, whether any action had been taken on it and that was sometime after May 5. I don't recall what date it was.

[56] Q Now, after the submission in May, the Attorney General on July 6th wrote a letter to the city notifying them that an objection was interposed to the at-large feature of the council election, is that correct?

A Yes, sir.

Q And that is attached as Exhibit No. 6 to the stipulation?

A That is correct.

Q Now, there has been some question raised of the time limits of that.

Would you explain the policies of the decision set out in the guidelines regarding how the time is computed when a submission is made?

MR. McALISTER: We would note an objection.

THE COURT: Now wouldn't that be controlled by the guidelines—

MR. McALISTER: I quoted the statute which of course is known by the Court but I think the Supreme Court has said that certain regulations that have been adopted by the Attorney General pursuant to the statute are reasonable and we set out the regulation in there and we contend that even within the Attorney General's regulation, they are too late.

MR. HANCOCK: We agree, Your Honor, that the statute does set out the time period for responding and there [57] has been the question raised here that two extra days were taken and I would like for Ms. Delaney, have her testimony as to the reason for that, to show that it meets the requirements for the guidelines and the statute.

MR. McALISTER: I think the statute and the guidelines speak for themselves, Your Honor, as well as the calendar.

THE COURT: I think they do too.

MR. HANCOCK: May I could do it without testimony, Your Honor. All my point was, that the 60th day and July the 4th this year fell on Sunday which is a national holiday and Independence Day was celebrated on July 5th and the Court is aware that it was a national holiday and also—

THE COURT: By what authority? By Presidential proclamation?

MR. HANCOCK: Yes, sir, Executive Order 11582 provides for the observance of holidays by Government Agencies and provides that when a holiday falls on Sunday then it is observed on Monday.

THE COURT: That includes the 4th of July?

MR. HANCOCK: I'm sorry, sir?

THE COURT: Does that include the 4th of July?

MR. HANCOCK: Yes, sir, includes all holidays, all national holidays and Independence Day, of course, is [58] one of the national holidays and in 3CFR—it is published in 3CFR and that provides—

THE COURT: That provides that the holiday will be observed on Monday. Does that alter the time limitation for the purpose of the statute, the fact that a Federal Agency would be closed on Monday?

MR. HANCOCK: Well, I think an analogy, Your Honor, would be if pleadings were due in this court on that date, they would not be due to be filed until that following Tuesday, as the clerk's office would be closed and the court would not have been in session.

THE COURT: The rules are specific with respect to that problem.

MR. HANCOCK: I believe the guidelines there are consistent with those rules.

MR. McALISTER: Let me state this, a Presidential proclamation only deals with when federal employees can take leave without it being charged against them. In other words, if the holiday falls on a Sunday, then they can take off on Monday and that won't be counted as a day of annual leave but it doesn't make Monday a national holiday.

MR. HANCOCK: Well, I would disagree with that interpretation.

THE COURT: You have indicated where the regular proclamation is a Presidential proclamation?

[59] MR. HANCOCK: Yes, sir.

MR. McALISTER: I might state, Your Honor, I worked on Monday. It was not a national holiday for me and we usually try to take those.

MR. HANCOCK: Also, Your Honor, the United States Code at Title 5, Section 6104 does talk more, as Mr. McAlister mentioned, about the hourly pay of government employees and that when a national holiday does fall on a Sunday, that they are entitled to the next day as their holiday.

THE COURT: Is there any objection to the Court taking judicial notice of Executive Orders?

MR. HANCOCK: I think you have a right to do that, Your Honor. We also think for the purposes of this case, that the Court can take judicial notice of that as well as the Federal Register that provides for coverage of the State of Alabama.

THE COURT: What is the purpose of the guidelines?

MR. HANCOCK: We have a copy of those guidelines, Your Honor, if the Court would like to have a copy. They are published in 28CFR at Page 136. If the defendants have no objections, we could provide copies of those reports.

MR. McALISTER: We have no objection.

THE COURT: Have you finished your examination?

MR. HANCOCK: No, if I may proceed?

Ms. Delaney, Mr. McAlister, in his opening statement [60] indicated that in each instance in which a proposal or submission was made to the Attorney General, that the Attorney General waited until the last minute to respond

to that change and I think he referred to the fact that, as we were talking with the Court, of the 62 days and another time of 60 days and I would like to ask you whether—when you received this submission from the City of Sheffield, whether you began work on it promptly or whether you waited until the 59th day before you began?

A I recall when we received the submission of the referendum, I began speaking to people in the local area of Sheffield in April. I would have to refer to my notes but that is the first recollection I have as to when I began to make inquiry in connection with the submission.

Q Do you have your notes with you this morning?

A I have them with me but not at the stand.

Q Well, could you refresh your recollection?

A I think they are in my briefcase.

THE COURT: Gentlemen, the Court thinks this question of whether you waited to the last moment allowed by the law or by statute it is not peculiar if you respond within the time allowed by law.

MR. HANCOCK: That is our position, Your Honor.

THE COURT: We could be here indefinitely arguing back and forth whether you responded the first day or the [61] last day or some other day. That issue the Court will hold is irrelevant.

MR. HANCOCK: I have no further questions.

MR. McALISTER: No further questions.

I have no further evidence, Your Honor.

THE COURT: No further evidence?

Does counsel desire oral argument in this case? I think we will have to necessarily require briefs submitted very promptly. The issues have become so complex I think oral argument would be beneficial. What is counsel's view?

MS. DELANEY: I think we can submit briefs, Your Honor, but I would like clarification of what issues the Court would like for us to brief.

THE COURT: Would oral argument say of 15 minutes by the State and closing argument of five minutes and 20 minutes by the Government?

MR. McALISTER: That would be fine.

THE COURT: All right, we will allow the plaintiff 15 minutes and then 20 minutes oral argument by the defendant and five minutes oral argument by the plaintiff.

MS. DELANEY: Your Honor, the defendants have raised several issues which I believe are—should be dealt with. The first one raises a question as to whether the Voting Rights Act is applicable to the City of Sheffield. On this particular matter, I would like to call the Court's attention [62] and ask the Court to take judicial notice of the fact that the Attorney General and the Director of the Bureau of Census on August 7, 1965, made determinations as required under Section IV of the Voting Rights Act that the State of Alabama was subject to the provisions of Section IV and therefore, Section V. That determination was published in the Federal Register and I have copies of the Federal Register, if the Court would care to see them.

THE COURT: Your contention is they cover everything in Alabama?

MS. DELANEY: Yes, Your Honor. In support of that particular proposition, I would like to call the Court's attention to the legislative history of the Act and in particular, to the United States Code and Congressional Administrative News that sets forth the House reports and Senate reports of the statute to indicate first of all—by the way, that is the 1965 Volume and in the House version, at Page 2,456, it says where the entire state falls within the subsection, so does each and every political subdivision within that state.

Then again, on Page 2,554, we are of the view the entire state is covered by Section IV and they must be able to lift the prohibition if any part of it is to be relieved from the requirements of Section IV.

There is another section of the legislative history [63] on Page 2,561 wherein an entire state falls within this subsection so does each and every subdivision within the state and we are referring to Section IV.

I haven't researched this to a great extent but I think that does indicate that a determination of the State of Alabama covers a determination that the political subdivisions in that state are also covered and I think case law of the Supreme Court can be imputed to hold that as well.

Now, the second issue which the City of Sheffield has raised, is even if the Voting Rights Act is applicable to

the City of Sheffield, Section V would not apply for three reasons, apparently. One was that the—if I understand the argument correctly, the city had a commission form of government in 1912 and had that commission form up until the present time and it followed state law in that respect. In that regard, I would like to say and refer the Court to the standard which is set forth in the Voting Rights Act, Section V, which states if a jurisdiction which is covered by the Act shall enact or seek to administer a standard practice or procedure which is different from that which is in force and effect on November 1, 1964 that that is a change within the meaning of Section V and I think the evidence here clearly indicated that the city had a commission form of government and it was entirely different [64] from that they were seeking to implement and that that particular kind of change constituted a change in the practice or procedure different from that that was in force and effect. It doesn't matter what the state law requires. That is not the issue. The issue is whether the City of Sheffield made some sort of a change in voting procedure which is different from that which was in force and effect on November 1st, 1964. That is the way you have to approach the case and not whether the city followed state law. We have no quarrel because I think we understand what the state law provides.

The city has also raised in that regard an argument that this is a proceeding in equity, the Department of Justice has not handled this with clean hands but I would like to say that I think the testimony here before the Court has indicated that the Attorney General has acted within statutorily required time and once information was necessary to reach this determination was submitted to the Department, that any real delay was caused by the city insofar as any final determination of the question at hand is concerned.

The city has also raised an issue whether this Court has jurisdiction to determine the merits of the case and I think this issue can be disposed of rather quickly by citing Allen versus State Board of Elections and (Citation inaudible) both of which are early cases concerning constitutionality of the Voting Rights Act and therein, [65]

both Supreme Court cases the Court indicated the jurisdiction of a three judge district court on coverage question is limited to the very narrow question, limited solely to whether there was coverage and if so, whether preclearance had been obtained and the substantive question, the question of the merits was reserved by this statute to either the Attorney General or through the United States District Court in the District of Columbia and I think the language, if the Court would like for me to cite it is very specific on that point.

Under Allen versus State Board of Elections, on the jurisdictional question, I refer you to Pages — the case is cited at 393 U.S. 544 and I refer the Court to Pages 558 and 559.

THE COURT: These will be included in the brief?

MS. DELANEY: The citations, yes, Your Honor.

I think as far as the 60 day question is concerned, the United States is prepared to submit a brief on that after additional research and I won't argue beyond what has been argued thus far.

I would like to summarize and say that I think on the basis of the stipulation before the Court and the testimony of Mayor Draper and the other testimony that I gave, that the Government has met the task of presenting the evidence that the city had a commission form of government on [66] November 1st, 1964 and made changes which are within the scope of Section V changing the form of government, changing the number of people that were going to be elected, changing the duties and responsibilities of the people who were going to run the City of Sheffield and on all of those changes, I think they come within the meaning of Section V and the question is as to whether the city has adopted and sought to administer changes in the standard practices and procedures that are different from those that were in force and effect in 1964. And that with respect to the at-large election of councilmen, that that change has not received pre-clearance and until the city obtains such pre-clearance, any changes which have been made after November, 1964, which haven't received preclearance are legally unenforceable.

The city does have other options. It may go to the United States District Court and may seek a reconsideration by the Attorney General on its objection but until some sort of pre-clearance is obtained, that change is simply not permissible under federal law.

I think I will close with that.

THE COURT: All right.

MR. McALISTER: May it please the Court, I have told myself writing down here that I won't get emotional about this because I am personally involved as a citizen of the City of Sheffield, Alabama but for the first time [67] in my life as a citizen of this country, I feel the oppression of the federal bureaucracy. I know you all hear the speech everyday by somebody that has been tramped by the government.

The perversion of the Voting Rights Act which started with Allen versus Board of Elections runs full-blown today with the Department of Justice versus the City of Sheffield. As I stated to you before, we are a little, old town of 13,000 people who were trying to do what we felt like was an improvement of the democratic process in our city. We had historically had a commission form of government and like all small towns, we had a hard time getting people to run for the jobs. So the city fathers and the people who were trying to run the city said maybe we can do a little better and get more interest in the town if we change forms of government and get more people involved. So we put it to a vote of the people and the people said, yes, let's try that. So at that point, when the people said, let's change, we set in motion a series of events that were governed by the laws of the State of Alabama. We had no choice about how we would like for those series of events to occur. The state law said how they would occur and we followed to the letter what the state law said and that law culminated in the elections that we held on August the 10th of this year.

Now, the city fathers were pretty good in the [68] prediction of participation by citizens in government. We had 32 candidates who campaigned hard for the various jobs of the city. We got blacks to participate the first time ever in the history of the city and there is a good chance a black will be elected which is good. Our town has 19

percent black population. It is a model area and has been historically as far as race relations, race discrimination and the whole bit, it just hasn't been there. So when this thing dropped out of the sky on us from the Department of Justice, they were going to run in here and enjoin our election, it, to say the least, gentlemen, was a surprise.

Now, to interrupt a democratic process in a political subdivision, whether it be a little, old town like Sheffield, Alabama or a big city like New York, it is the most severe action that anybody can take because every segment of our population must have government and if the court or the Department of Justice comes in and interrupts the orderly transition of government from either one form to the other or the continuation of a form, you have chaos in your political subdivision.

Where is the City of Sheffield right now just with the threat of this suit by the Justice Department. The bond lawyers are up in the air and even with bond issues that have already been bought as to what—is there going to be [69] a government in Sheffield, where is going to be? It has affected our interest rate. Just the confusion and where are we going to be if the Court should decide to throw out the election.

THE COURT: Those are practical problems that the city will face but those are not problems that this Court has the jurisdiction to resolve, does it?

MR. McALISTER: Judge, I think they are practical problems which any Court should consider in making an equitable determination.

THE COURT: But I am talking about the very limited jurisdiction with respect to this matter and the primary jurisdiction of the Court of the District of Columbia and the Attorney General. The issue has been raised about jurisdiction and you are assuming that we have full jurisdiction with all aspects of the controversy as we might in a similar suit brought under the other allegations—other jurisdictional foundation.

MR. McALISTER: No, sir, in considering the relief requested by the Department of Justice, I think this Court has to consider the ramifications of the relief.

THE COURT: If the Government is correct in its contention, the only issue before us is coverage and compliance, in fact, the only issue would be a question of coverage because the Attorney General has disapproved that [70] aspect of it and it is not an appropriate consideration for the Court.

MR. McALISTER: Judge, I hope that is not the law.

THE COURT: Well, we are not so oblivious that we would not understand the practical problems if the election is enjoined. We understand that, but it would help us if we can get to the legal issues which have been raised by the pleadings and by counsel's statements to the Court.

MR. McALISTER: I just wanted to make sure that this Court in its varied experiences has had the opportunity of dealing with a local political subdivision and the necessity for local government.

Now, as to the legal issues involved, I believe they have been set out in the memoranda and at this time, I won't go into them.

THE COURT: All right.

MS. DELANEY: I have no other comments to make.

THE COURT: How quickly can we get briefs submitted? It would be helpful if you take up each of the time limits and the various issues but I don't think it would be of much help to discuss the equity feature.

MS. DELANEY: You would like for us to address the issue of the jurisdictional question and the computation of time?

THE COURT: Yes, ma'am.

[71] MS. DELANEY: Would you want us to brief the question of whether the political jurisdiction falling under the state are covered?

THE COURT: Brief that.

MS. DELANEY: All right. I don't think it would take too long, Your Honor. I think we could have something in court by next week, late next week.

THE COURT: You could have your brief in the Court's hands in one week?

MS. DELANEY: That's right.

THE COURT: Today a week?

MS. DELANEY: That's right.

THE COURT: How about you, Mr. McAlister?

MR. McALISTER: The same time. Or do you want us to reply to theirs after we get theirs?

THE COURT: Yes, sir.

MR. McALISTER: All right, we can reply within three days.

THE COURT: All right, suppose you take one week and then take four days to reply.

MS. DELANEY: Would you expect additional oral argument on that or just the briefs?

THE COURT: No further oral argument.

We would ask that you file your brief with the clerk and send each judge a copy of it. Of course, two of [72] the judges are here in Birmingham, Judge McFadden and Judge Grooms and I am in Montgomery, P. O. Box 1070 and Zip Code 36102. Just mail your briefs to that address.

I think with that, we have the case in hand so that we can dispose of it on the merits.

The court will stand adjourned until further ordered.

CERTIFICATE

STATE OF ALABAMA)

JEFFERSON COUNTY)

I Ray C. Wester, Official Court Reporter of the United States District Court, Birmingham, Alabama, do hereby certify that I reported in shorthand the foregoing proceedings in the trial of the above-styled cause and that the foregoing 72 pages contain a full, true and correct transcript of said proceedings at said time and place.

I further certify that I am neither of counsel nor of kin to any party to said cause, nor in any manner interested in the results thereof.

/s/ Ray C. Wester
Official Court Reporter

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHWESTERN DIVISION

[Filed Dec. 27, 1976]

Civil Action No. 76-M-1086-NW

(Three-Judge Court)

UNITED STATES OF AMERICA, PLAINTIFF

v.

BOARD OF COMMISSIONERS OF SHEFFIELD, ALABAMA; F. E. DRAPER, Member and President and B. F. WALDEN and DONALD F. RUGGLES, Members, DEFENDANTS

PLAINTIFF'S MOTION FOR RECONSIDERATION AND AMENDMENT OF ORDER

Plaintiff, the United States of America, moves this Court pursuant to Rule 59 of the Federal Rules of Civil Procedure to reconsider and amend the Order and Memorandum Opinion entered on December 13, 1976, so as to withdraw those portions thereof which conclude 1) that the City of Sheffield is not a political subdivision within the meaning of the Voting Rights Act of 1965, as amended, and therefore not subject to the provisions of Section 5 of the Act and 2) that the failure of the Attorney General to object to the referendum constituted approval of the change to the mayor-council form of government. Plaintiff further moves that this Court establish a briefing schedule to permit the parties herein to fully and adequately brief the aforementioned issues and to set them for oral argument. As grounds for this Motion, the United States alleges as follows:

1. This Court's Memorandum Opinion and Order of December 13, 1976, found that the Attorney General's July 6 objection was timely interposed and, on the basis of that finding, partially granted the United States' Rule 59 Motion for reconsideration of this Court's previous

opinion and order of September 29, 1976. However, on the basis of its other conclusions concerning coverage under the Voting Rights Act and the effect of the Attorney General's non-objection to the referendum election in the City of Sheffield, this Court denied the United States' request for an injunction and dismissed the Complaint.

2. The Voting Rights Act of 1965 was enacted primarily to enforce the guarantees of the Fifteenth Amendment and Section 5 is one of a complex scheme of remedies aimed at states where voting discrimination based on race or color had been most flagrant.

3. The issues at stake here are of major public importance and affect the Attorney General's enforcement responsibilities under the Voting Rights Act which is regarded as one of the most effective civil rights statutes ever enacted by Congress.

4. The fact that the Voting Rights Act has been extended twice since 1965, most recently in 1975, demonstrates that Congress has been kept well informed concerning the operation of the statute and the manner in which it has been enforced by the Attorney General. Indeed, Congressional opposition to the statute has lessened considerably since 1965, due in large measure to increased understanding of the statute and its effectiveness.

5. The Attorney General, as the chief legal officer of the United States responsible for enforcing this legislation, including Section 5, has consistently interpreted the Act, and decisional law supports that interpretation, as requiring that changes affecting voting occurring in cities within Alabama and in other states covered by the special provisions of the Act must obtain federal preclearance pursuant to Section 5 without regard to whether such cities conduct voter registration.

6. The Attorney General's enforcement of Section 5 with respect to cities in Alabama which do not conduct voter registration is based upon the statutory language, the legislative history of the statute and the clear intent of Congress that Section 5 should apply to any changes affecting voting accomplished within a state which has been determined to be covered pursuant to Section 4(b), whether those changes are enacted or administered by the

state directly or indirectly by virtue of the power vested in local governments by the state. The intent of Congress was that "all changes, no matter how small, be subjected to § 5 scrutiny." *Allen* v. *State Board of Elections*, 393 U.S. 544, 568 (1969). Such an interpretation is wholly consistent with the term "state" as embodied in the Fifteenth Amendment and with the intent of Congress regarding the operation of the other special coverage provisions of the statute, *i.e.*, § 4(a), § 6 and § 8. That Congress intended these provisions to apply anywhere in a state or political subdivision covered by Section 4(b) is perhaps most clearly demonstrated by the burden those jurisdictions must meet if they are to successfully "bail out" from under coverage of the special provisions. Thus, there must be a determination that the right to vote of no citizen has been denied or abridged on account of race or color anywhere within the covered state or political subdivision. Therefore, an interpretation of Section 5 which centers upon function rather than geography is wholly inconsistent with the intent of Congress. Indeed, it would be no small irony if Congress, in enacting the Voting Rights Act of 1965, exempted the City of Selma, Alabama, from the special coverage provisions.

7. Congress, fully aware of the Attorney General's enforcement efforts vis-a-vis such cities, as well as those of private litigants also seeking to enforce the guarantees of Section 5, has never advised the Attorney General that he has exceeded his statutory authority by requiring such cities to obtain federal preclearance pursuant to Section 5; nor has Congress questioned his authority to proceed in this manner.

8. Since 1965, cities in almost every county in Alabama have submitted changes affecting voting to the Attorney General for Section 5 preclearance, including the City of Sheffield, voluntarily, at the request of the Department of Justice or pursuant to court order. We note that the Northern District of Alabama has itself heretofore ordered cities to comply with the requirements of Section 5.

9. With regard to the effect of the Attorney General's failure to object to the referendum, the record amply demonstrates that there was considerable uncertainty as to whether the City of Sheffield was obliged to follow the directives of Title 37, § 426, Code of Alabama (Recomp. 1958). Language in the referendum proposition, in the statute governing the abandonment of commission forms of government, *i.e.*, Title 37, §§ 120-133 Code of Alabama (Recomp. 1958) and in Exhibit 3 of the Stipulations of Fact raised the possibility that the City was not so obliged. Furthermore, the City of Sheffield did not adopt ward boundaries until December, 1975. Therefore, the Attorney General could not have given approval to the change in form of government when, at the time the referendum was submitted for preclearance, the City had not even finalized all the changes involved in the governmental reorganization.

10. The issue of whether the City of Sheffield is a "political subdivision" within the meaning of the Voting Rights Act and for that reason subject to the provisions of Section 5 was not asserted as a defense in the defendants' answer or raised as an issue in the September 3, 1976, hearing on the merits of this action. That issue was first raised in the Post Trial Brief for Defendants. The issue regarding the effect of the Attorney General's nonobjection to the referendum was not raised by defendants but by the Court in its December 13, 1976, opinion. Neither of these issues as such has been briefed by the parties. Since these issues, particularly the coverage issue, are vitally important for the reasons set forth above, this Court should establish a briefing schedule and hear arguments on briefs before a decision on the merits is determined.

WHEREFORE, the United States prays that this Court set this Motion for a prompt hearing and, on the basis of this Motion and the other evidence in the record, prays that the Court reconsider and amend its Order of December 13, 1976, by withdrawing the specified portions and

enter an Order granting the additional relief requested on page 1 of this Motion.

Respectfully submitted,

WAYMAN G. SHERRER
United States Attorney

J. STANLEY POTTINGER
Assistant Attorney General

/s/ Sheila K. Delaney
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CERTIFICATE OF SERVICE

I certify that I have served copies of the foregoing Plaintiff's Motion for Reconsideration and Amendment of Order by mailing copies thereof, postage prepaid, to opposing counsel of records, to wit:

Vincent McAlister, Esquire
Braxton W. Ashe, Esquire
Alman, McAlister & Ashe
P. O. Drawer N
Sheffield, Alabama 35660

This the 23rd day of December 1976.

/s/ Sheila K. Delaney
SHEILA K. DELANEY
Attorney
Department of Justice
Washington, D. C. 20530

SUPREME COURT OF THE UNITED STATES

No. 76-1662

UNITED STATES, APPELLANT

v.

BOARD OF COMMISSIONERS OF SHEFFIELD, ALABAMA, ET AL.

APPEAL from the United States District Court for the Northern District of Alabama.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

June 27, 1977

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